IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, v. CHAD F. STITES, et al, Defendants.	)	89-C-592-B
and		
UNITED STATES OF AMERICA, Plaintiff, v. CHAD F. STITES, et al, Defendants.	)	89-C-613-B Consolidated

JUDGMENT

The court has for consideration the Report and Recommendation of the Magistrate Judge filed December 4, 1991, in which the Magistrate Judge recommended that plaintiff's Motion for Leave to Enter Deficiency Judgment be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

Judgment in favor of plaintiff is hereby entered in the amount of $6,348.57, plus interest and costs from February 1, 1990, in Case No. 89-C-613-B.

Judgment in favor of plaintiff is hereby entered in the amount of $6,744.57, plus interest and costs from April 16, 1990, in Case No. 89-C-592-B.

Dated this 10 day of January, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATIONAL UNION FIRE INSURANCE COMPANY, and MID-STATES AIRCRAFT ENGINES, INC.,	)	
Plaintiffs,	)	
v.	)	No. CIV-87-5-E
A.A.R. WESTERN SKYWAYS, INC.,	)	
Defendant.	)	

JUDGMENT

This contribution action came on for jury trial on June 17, 1991. At the conclusion of the trial, the jury determined that National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. had paid more than their proportionate share and that its payment of $503,667.67 was reasonable. The jury further found that Mid-States Aircraft Engines, Inc. and A.A.R. Western Skyways were negligent; and apportioned negligence between of sixty percent (60%) by A.A.R. Western Skyways and thirty percent (30%) by Mid-States Aircraft Engines, Inc. The Court finds that the jury's apportionment between A.A.R. Western Skyways and Mid-States Aircraft Engines, Inc. means that A.A.R. Western Skyways shall bear 2/3 of the $503,666.67 advanced by National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. The Court also finds that National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. are entitled to receive interest from the date the monies were advanced in the amount of $241,551.41.

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IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that judgment be granted and it is hereby entered in favor of National Union Fire Insurance Company and Mid-States Aircraft Engines, Inc. against A.A.R. Western Skyways, Inc. in the amount of $577,328.73 plus costs.

Dated this 10TH day of January, 1992.

JAMES O. ELLISON
U.S. DISTRICT JUDGE

Submitted by:

Michael Atkinson
BEST, SHARP, THOMAS, GLASS & ATKINSON
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THE LAW FIRM OF
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By Edward A. McConwell
Edward A. McConwell

ATTORNEYS FOR PLAINTIFFS

NATIONAL UNION FIRE INSURANCE COMPANY V. A.A.R. WESTERN SKYWAYS
SUMMARY OF JUDGMENT CALCULATIONS
MADE PURSUANT TO COURT'S MINUTE ENTRY
MADE SEPTEMBER 20, 1991

DATE	CUMULATIVE PRINCIPAL TO BE REIMBURSED	# DAYS	INTEREST RATE	INTEREST
7/31/85	208,000.00 (2/3 x 312,000)			
7/31-8/6		6	15%	512.87
8/6/85	263,555.32 (2/3 x 395,333)			
8/7-8/21		15	15%	1,624.66
8/21/85	335,777.32 (2/3 x 503,666)			
8/22-8/31/85		10	15%	1,379.89
9/1/85-8/31/86	335,777.32	365	15%	50,366.35
9/1/86 - 8/31/87	335,777.32	365	11.65%	39,118.05
9/1/87 - 8/31/88	335,777.32	365	10.03%	33,678.47
9/1/88-8/31/89	335,777.32	365	9.95%	33,409.84
9/1/89 - 8/31/90	335,777.32	365	10.92%	36,666.88
9/1/90-7/5/91	335,777.32	308	12.35%	34,991.88
7/6/91-10/4/91	335,777.32	91	11.71%	9,802,52
TOTAL JUDGMENT	577,328.73			241,551.41

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HAROLD ALEXANDER,

Plaintiff,

v.

THE ROONEY MANAGEMENT CORP., d/b/a THE ROONEY COMPANY, a corporation,

Defendant.

No. 91 C 159-B

ORDER OF DISMISSAL WITH PREJUDICE

The Court, having before it the written Stipulation for Dismissal with Prejudice signed by all parties to this litigation, finds that based upon the agreement of the parties the Stipulation for Dismissal with Prejudice should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the litigation captioned herein, including all complaints, counterclaims, cross-complaints and causes of action of any type by any party, should be and the same are hereby dismissed with prejudice to the refiling thereof. This Judgment is entered this 10th day of Jan., 1992.

THOMAS R. BRETT
Judge of the U.S. District Court

JAD/bjo
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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GLENN ELVIN HAGER, Plaintiff,	)	
v.	)	91-C-808-B
The Sheriff of Tulsa County, STANLEY GLANZ, et al, Defendants.	)	

ORDER

This order pertains to plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 (Docket #3)[1] and the Notice to Court of Unknown Whereabouts of Plaintiff filed by defendants Randle and Diamond (Docket #17). Defendants advise the court that "the mailing to plaintiff of said defendants' Answer and Disclaimer ... has been returned ... bearing the notation 'attempted not known'." Two mailings by this court to plaintiff at his last known address have been similarly returned. The court file reflects that plaintiff has not been in touch with the court since October 23, 1991.

It is therefore ordered that plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is dismissed for failure of plaintiff to prosecute.

Dated this 10 day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARC HENRETTA, an individual,

Plaintiff,

v.

CHRYSLER CORPORATION, a Delaware corporation, and METROPOLITAN LIFE INSURANCE COMPANY, a foreign corporation,

Defendants.

No. 91-C-291-B

O R D E R

The parties herein have stipulated to all material facts and submit the matter for decision on Fed.R.Civ.P. 56 motions for summary judgment urged by each.*

Plaintiff, age 30 years, was rendered an irreversible paraplegic losing use of both feet as a result of a motorcycle racing accident on October 1, 1989. Plaintiff seeks recovery of $100,000.00, the benefits under accidental death and dismemberment (AD&D) insurance provided by Metropolitan Life Insurance Company under Plaintiff's employer's ERISA plan.

The pertinent provisions of the insurance policy state (Stipulation - Exhibit B, page 11):

> "This benefit applies if you die or suffer a covered dismemberment as the result of an accident.
>
> * * *

*Defendants application to file Amended Brief in Response to Plaintiff's Motion for Summary Judgment filed October 18, 1991 is sustained.

The Court is appreciative of the efforts of the attorneys in this case, as the motions were very well briefed.

> "If your loss is: Accidental death or accidental loss of more than one of the following: hand, foot, or sight of an eye...

benefits are payable. The AD&D defines loss as follows:

> " 'Loss' means, with regard to a hand or foot, severance at or above the wrist or ankle joint; . . ."[1]

The parties have stipulated the following relevant facts:

1. Plaintiff, now 30 years of age, is and at all times relevant hereto was, a citizen of the State of Oklahoma and a resident of Broken Arrow, Oklahoma and of the Northern District of Oklahoma.

2. Defendant Chrysler is incorporated in the State of Delaware, does business in the State of Oklahoma, County of Tulsa, and has its principal place of business in the State of Michigan.

3. Defendant Metropolitan Life Insurance Company is incorporated in the State of New York, does business in the State of Oklahoma, County of Tulsa, and has its principal place of business in the State of New York.

4. On October 1, 1989, Plaintiff was involved in a motorcycle racing accident. As a result of the accident, Plaintiff sustained injuries resulting in permanent, irreversible paraplegia, as a consequence of which Plaintiff lost the use of his feet.

5. Plaintiff's principal injuries, resulting in paraplegia, are described in the Affidavit attached as Exhibit "A" to the

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[1]The Loss definition in the Plan Summary has some minor difference (Plan Summary, page 11) but the Plan Summary expressly provides that benefits are controlled by the terms of the policy. (Plan Summary, page 5).

Stipulation of Facts filed herein on September 18, 1991.

6. At the time of the accident described in Paragraph 4, the Plaintiff was employed by Defendant Chrysler, incident to which employment he was a beneficiary under an employee benefit plan established by Chrysler (the "Plan") and funded, in part, by a group insurance policy No. 3903-61, underwritten by Metropolitan Life (the "Policy"). A copy of the Plan is attached as Exhibit "B" to the Stipulation of Facts filed herein September 18, 1991. A copy of the Policy is attached as Exhibit "C" to the Stipulation of Facts filed herein September 18, 1991.

7. By letter dated March 25, 1991, and by phone conference on April 25, 1991, Metropolitan Life advised Plaintiff on behalf of Defendants that he had not suffered "loss of both feet" within the meaning of Chrysler's ERISA Plan and denied Plaintiff recovery of benefits under the Plan.

8. If the Plaintiff's claim is covered under the Plan, the benefit payable under the Plan is $100,000.00.

The neurosurgeon, Dr. Benjamin G. Benner, M.D. states in his affidavit (Ex. A to Stipulation of Facts):

> "During surgery performed on Marc Henretta on October 1, 1989, I observed what I described in my operative report (copy attached to Affidavit of Benjamin G. Benner, M.D., as Exhibit B) as 'a complete disruption of the interspinous ligament' located between the spinous processes of the eleventh and twelfth thoracic vertebrae. In layman's terms this means that the ligament was no longer intact but had been severed or ruptured (i.e., broken apart or separated) as a result of the forces exerted upon this and other anatomical structures when Marc landed on his back.

> "With the disruption of this interspinous ligament which, like all ligaments, is composed of strong, fibrous connective tissue, the eleventh and twelfth thoracic vertebrae in Marc Henretta's spinal column were free to move independent of one another. Dislocation of his eleventh and twelfth thoracic vertebrae resulted. This, in turn, resulted in compromise of the spinal canal and produced the spinal cord injury which manifested itself as paraplegia, i.e., paralysis of the legs and lower trunk."

This case comes within the Employee Retirement Income Security Act of 1974, commonly referred to as "ERISA," 29 U.S.C. § 1001 *et seq.* Under ERISA any program established by an employer for the purposes of providing employees and their dependents with benefits, funded by the purchase of insurance, is an ERISA welfare plan. Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41, 95 L.Ed.2d 39, 46, 107 S.Ct. 1549 (1987), and Roe v. General American Life Ins. Co., 712 F.2d 450, 451 (10th Cir. 1983).

The terms of the plan and the provisions of ERISA govern the rights and obligations of participants, beneficiaries and the fiduciaries. 29 U.S.C. §§ 1022(b), 1132(a)(1). When a plan fiduciary has discretionary authority to construe the terms of a plan, the Court's review of the fiduciary's decision is limited to determining whether the interpretation was arbitrary or capricious. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 956, 103 L.Ed.2d 80, 95 (1989); Carter v. Central States, Southeast and Southwest Areas Pension Plan, 656 F.2d 575, 576 (10th Cir. 1981). If, however, as herein, the Plan does not give the fiduciary such discretion, then the review is to be *de novo*.

Firestone Tire & Rubber Co. v. Bruch, *supra.*

Where the *de novo* standard is applicable, the Plan construction is subject to a "federal common law of rights and obligations" based upon the principals of trust law.[2] The terms of the Plan are to be examined and "determined by the provisions of the instrument as interpreted in light of all of the circumstances and such other evidence of the intention of the settlor with respect to the trust as is not inadmissible." Firestone Tire & Rubber Co. v. Bruch, *supra.* Where the trust instrument is composed of more than one document, all of the documents must be read as a whole. Piambino v. Bailey, 610 F.2d 1306, 1322 (5th Cir. 1980), *cert. denied,* 449 U.S. 1011, 101 S.Ct. 568, 66 L.Ed.2d 469.

It is the Court's function herein to determine the intent of the settlor, Chrysler, of the Plan. The Plan defers to and employs language of Metropolitan's underlying group insurance policy. In so

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[2]Plaintiff urges that Oklahoma law should apply in interpreting the subject ERISA disability insurance policy by reason of the state law savings clause contained in 29 U.S.C. § 1144(b)(2)(A) which provides:

> "Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."

The United States Supreme Court has expressly held that state law claims for breach of contract, tortious breach of contract, fraud, bad faith failure to pay benefits, and breach of fiduciary duty, are pre-empted by ERISA. Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41, 95 L.Ed.2d 39, 47-48, 50-51, 107 S.Ct. 1549 (1987). Thus, state regulatory authority of insurance companies remains but substantive contract law is pre-empted by ERISA.

construing the language of the Plan, the Court is to be guided by federal common law. Federal common law under ERISA, however, is in its developing stages. Only two reported federal cases are found construing policy language, one of which is similar to that in the instant case. In DeWitt v. State Farm Ins. Companies Ret. Plan, 905 F.2d 798 (4th Cir. 1990), it was held that an employee who lost use of his foot due to severance of an artery in his leg did not suffer "actual severance" of his foot within the meaning of the employer's disability insurance policy. In Arnold v. Life Ins. Co. of North America, 894 F.2d 1566 (11th Cir. 1990), the court concluded that partial loss of sight which was reasonably correctable was not "entire and irrecoverable loss of sight."

There are, however, many federal and state cases construing virtually identical language under state law. Although federal common law is law "fashioned by the federal courts through their interpretation of policy language and is not based upon any calculation of the majority of decisions from other jurisdictions," Arnold, *supra* at 1567, the Court in developing federal common law on the subject would best be guided by the extensive body of law interpreting similar provisions of like insurance policies.

The clear majority view in the courts of the United States is that where a policy provides coverage only when there is loss of a foot by "severance" or "actual severance" at or above the connecting joint, there must be loss of the extremity by physical

separation from the body.[3] DeWitt v. State Farm Ins. Companies Ret. Plan, 905 F.2d at 798 (interpreting ERISA plan under federal common law); Travelers Ins. Co. v. Burchett, 841 F.2d 155, 157 (6th Cir. 1988); Horvatin v. Allstate Life Ins. Co., 848 F.2d 1012, 1013 (9th Cir. 1988); Francis v. INA Life Ins. Co. of New York, 809 F.2d 183 (2nd Cir. 1987); Becktell v. Allstate Life Ins. Co., 648 F.Supp. 977, 979 (E.D.Mich. 1986) *aff'd,* 838 F.2d 1215 (6th Cir. 1988); Perry v. Connecticut General Life Ins. Co., 531 F.Supp. 625, 626-627 (E.D. Va. 1982); Suarez v. Life Ins. Co. of North America, 254 Cal. Rptr. 377, 380-382 (Cal.App. 1988); Farthing v. Life Insurance Company of North America, 500 N.E.2d 767 (Ind.App. 1986); Harris v. Prudential Ins. Co. of America, 501 N.E.2d 77, 78 (Ohio App. 1986); Alvarado v. Pilot Life Ins. Co., 663 S.W.2d 108, 110 (Tex.App. 1983) writ refused n.r.e.; Juhlin v. Life Ins. Co. of North America, 301 N.W.2d 59, 60 (Minn. 1980); Boyes v. Continental Ins. Co., 139 Ga. App. 609, 229 S.E.2d 75, 76-77 (1976); Sitzman v. John Hancock Mutual Life Insurance Co., 522 P.2d 872, 875 (Or. 1974).

The majority view has been adopted by a federal district court interpreting Oklahoma law in Traverse v. World Service Life Ins. Co., 436 F.Supp. 810, 811-812 (W.D. Okl. 1977). In the case of Great Northern Life Ins. Co. v. Tulsa Cotton Oil Co., 182 Okla.

[3]Plaintiff urges an interpretation saying that since Plaintiff suffered a severance injury in the lower spine (above the ankle) that caused the loss of use of his feet, the intent of the policy language is satisfied. This, however, is a strained construction contrary to the unambiguous policy language.

107, 76 P.2d 913 (1938), the Oklahoma court concluded that loss of use of a hand was not covered when the policy defined loss as "dismemberment between the wrist and elbow joint."

There is a minority view that in substance equates loss of use with severance. Neer v. Fireman's Fund American Life Ins. Co., 692 P.2d 830 (Wash. 1985); Mifsud v. Allstate Ins. Co., 456 N.Y.S.2d 316 (1982); Stanley v. Safeco Ins. Co. of America, 747 P.2d 1091 (Wash. 1988); and Bauer v. Kar Products, Inc., 749 P.2d 1385 (Mont. 1988). The minority view by circuitous reasoning arrives at a result contrary to the clear unambiguous language of the policy. Although the majority view in state courts does not dictate federal common law, the Court concludes the majority view is the more persuasive because it is true in its interpretation of the clear and unambiguous language of the insurance policy and thus expresses the intent of the settlor.

For the reasons stated above, the Motion for Summary Judgment of the Defendants, Chrysler Corporation and Metropolitan Life Insurance Company, is hereby SUSTAINED and the Motion for Summary Judgment of the Plaintiff, Marc Henretta, is hereby OVERRULED. A separate Judgment in keeping with the Court's order as expressed herein will be filed contemporaneously.

DATED this 10th day of January, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARC HENRETTA, an individual,

Plaintiff,

v.

CHRYSLER CORPORATION, a Delaware corporation, and AETNA LIFE INSURANCE COMPANY, a Connecticut corporation,

Defendants.

No. 91-C-270-B

J U D G M E N T

In keeping with the Order Sustaining the Motion for Summary Judgment of the Defendants, Chrysler Corporation and Aetna Life Insurance Company, Judgment is hereby rendered in favor of the Defendants, Chrysler Corporation and Aetna Life Insurance Company, and against the Plaintiff, Marc Henretta, and Plaintiff's action is hereby dismissed. The Defendants are entitled to costs as the prevailing party if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys fees.

DATED this 10th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARC HENRETTA, an individual,

Plaintiff,

v.

CHRYSLER CORPORATION, a Delaware corporation, and AETNA LIFE INSURANCE COMPANY, a Connecticut corporation,

Defendants.

No. 91-C-270-B

O R D E R

The parties herein have stipulated to all material facts and submit the matter for decision on Fed.R.Civ.P. 56 motions for summary judgment urged by each.*

Plaintiff, age 30 years, was rendered an irreversible paraplegic losing use of both feet as a result of a motorcycle racing accident on October 1, 1989. Plaintiff seeks recovery of $42,500.00, the benefits under accidental death and dismemberment coverage (ADDC) provided by Aetna Life Insurance Company under Plaintiff's employer's ERISA plan.

The pertinent provisions of the insurance policy state (Stipulation - Exhibit C, page 6, ADDC in original as amended):

> "In the Event of Loss of Life, or of more than one of the following: Hand, Foot or Sight of an Eye . . . "

benefits are payable. The ADDC defines loss as follows:

> " 'Loss' means, with regard to a hand or foot, actual severance through or above the wrist or

*The Court is appreciative of the efforts of the attorneys in this case, as the motions were very well briefed.

ankle joint; . . ."[1]

The parties have stipulated the following relevant facts:

1. Plaintiff, now 30 years of age, is and at all times relevant hereto was, a citizen of the State of Oklahoma and a resident of Broken Arrow, Oklahoma and of the Northern District of Oklahoma.

2. Defendant Chrysler is incorporated in the State of Delaware, does business in the State of Oklahoma, County of Tulsa, and has its principal place of business in the State of Michigan.

3. Defendant Aetna Life Insurance Company is incorporated in the State of Oklahoma, does business in the State of Oklahoma, County of Tulsa, and has its principal place of business in the State of Connecticut.

4. On October 1, 1989, Plaintiff was involved in a motorcycle racing accident. As a result of the accident, Plaintiff sustained injuries resulting in permanent, irreversible paraplegia, as a consequence of which Plaintiff lost the use of his feet.

5. Plaintiff's principal injuries, resulting in paraplegia, are described in the Affidavit attached as Exhibit "A" to the Stipulation of Facts filed herein on July 31, 1991.

6. At the time of the accident described in Paragraph 4, the Plaintiff was employed by Defendant Chrysler, incident to which employment he was a beneficiary under an employee benefit plan

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[1]The Loss definition in the Plan Summary has some minor difference (Plan Summary, page 11) but the Plan Summary expressly provides that benefits are controlled by the terms of the policy. (Plan Summary, page 5).

established by Chrysler (the "Plan") and funded, in part, by a group insurance policy No. 334000, underwritten by Aetna (the "Policy"). A copy of the Plan is attached as Exhibit "B" to the Stipulation of Facts filed herein July 31, 1991. A copy of the Policy is attached as Exhibit "C" to the Stipulation of Facts filed herein July 31, 1991.

7. By letters dated June 15, 1990, and March 29, 1991, Aetna advised Plaintiff on behalf of Defendants that he had not suffered "loss of both feet" within the meaning of Chrysler's ERISA Plan and denied Plaintiff recovery of benefits under the Plan.

8. If the Plaintiff's claim is covered under the Plan, the benefit payable under the Plan is $42,500.00.

9. Defendants maintain this dispute is governed by federal law; however, to the extent state law applies, the parties stipulate that Oklahoma law controls.

The neurosurgeon, Dr. Benjamin G. Benner, M.D. states in his affidavit (Ex. A to Stipulation of Facts):

> "During surgery performed on Marc Henretta on October 1, 1989, I observed what I described in my operative report (copy attached to Affidavit of Benjamin G. Benner, M.D., as Exhibit B) as 'a complete disruption of the interspinous ligament' located between the spinous processes of the eleventh and twelfth thoracic vertebrae. In layman's terms this means that the ligament was no longer intact but had been severed or ruptured (i.e., broken apart or separated) as a result of the forces exerted upon this and other anatomical structures when Marc landed on his back.
>
> "With the disruption of this interspinous ligament which, like all ligaments, is composed of strong, fibrous connective tissue, the eleventh and twelfth thoracic vertebrae in

> Marc Henretta's spinal column were free to move independent of one another. Dislocation of his eleventh and twelfth thoracic vertebrae resulted. This, in turn, resulted in compromise of the spinal canal and produced the spinal cord injury which manifested itself as paraplegia, i.e., paralysis of the legs and lower trunk."

This case comes within the Employee Retirement Income Security Act of 1974, commonly referred to as "ERISA," 29 U.S.C. § 1001 *et seq.* Under ERISA any program established by an employer for the purposes of providing employees and their dependents with benefits, funded by the purchase of insurance, is an ERISA welfare plan. Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41, 95 L.Ed.2d 39, 46, 107 S.Ct. 1549 (1987), and Roe v. General American Life Ins. Co., 712 F.2d 450, 451 (10th Cir. 1983).

The terms of the plan and the provisions of ERISA govern the rights and obligations of participants, beneficiaries and the fiduciaries. 29 U.S.C. §§ 1022(b), 1132(a)(1). When a plan fiduciary has discretionary authority to construe the terms of a plan, the Court's review of the fiduciary's decision is limited to determining whether the interpretation was arbitrary or capricious. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 956, 103 L.Ed.2d 80, 95 (1989); Carter v. Central States, Southeast and Southwest Areas Pension Plan, 656 F.2d 575, 576 (10th Cir. 1981). If, however, as herein, the Plan does not give the fiduciary such discretion, then the review is to be *de novo*. Firestone Tire & Rubber Co. v. Bruch, *supra.*

Where the *de novo* standard is applicable, the Plan construction is subject to a "federal common law of rights and obligations" based upon the principals of trust law.[2] The terms of the Plan are to be examined and "determined by the provisions of the instrument as interpreted in light of all of the circumstances and such other evidence of the intention of the settlor with respect to the trust as is not inadmissible." Firestone Tire & Rubber Co. v. Bruch, *supra.* Where the trust instrument is composed of more than one document, all of the documents must be read as a whole. Piambino v. Bailey, 610 F.2d 1306, 1322 (5th Cir. 1980), *cert. denied,* 449 U.S. 1011, 101 S.Ct. 568, 66 L.Ed.2d 469.

It is the Court's function herein to determine the intent of the settlor, Chrysler, of the Plan. The Plan defers to and employs language of Aetna's underlying group insurance policy. In so construing the language of the Plan, the Court is to be guided by federal common law. Federal common law under ERISA, however, is in

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[2]Plaintiff urges that Oklahoma law should apply in interpreting the subject ERISA disability insurance policy by reason of the state law savings clause contained in 29 U.S.C. § 1144(b)(2)(A) which provides:

> "Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."

The United States Supreme Court has expressly held that state law claims for breach of contract, tortious breach of contract, fraud, bad faith failure to pay benefits, and breach of fiduciary duty, are pre-empted by ERISA. Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41, 95 L.Ed.2d 39, 47-48, 50-51, 107 S.Ct. 1549 (1987). Thus, state regulatory authority of insurance companies remains but substantive contract law is pre-empted by ERISA.

its developing stages. Only two reported federal cases are found construing policy language, one of which is similar to that in the instant case. In DeWitt v. State Farm Ins. Companies Ret. Plan, 905 F.2d 798 (4th Cir. 1990), it was held that an employee who lost use of his foot due to severance of an artery in his leg did not suffer "actual severance" of his foot within the meaning of the employer's disability insurance policy. In Arnold v. Life Ins. Co. of North America, 894 F.2d 1566 (11th Cir. 1990), the court concluded that partial loss of sight which was reasonably correctable was not "entire and irrecoverable loss of sight."

There are, however, many federal and state cases construing virtually identical language under state law. Although federal common law is law "fashioned by the federal courts through their interpretation of policy language and is not based upon any calculation of the majority of decisions from other jurisdictions," Arnold, *supra* at 1567, the Court in developing federal common law on the subject would best be guided by the extensive body of law interpreting similar provisions of like insurance policies.

The clear majority view in the courts of the United States is that where a policy provides coverage only when there is loss of a foot by "severance" or "actual severance" at or above the connecting joint, there must be loss of the extremity by physical separation from the body.[3] DeWitt v. State Farm Ins. Companies

[3]Plaintiff urges an interpretation saying that since Plaintiff suffered a severance injury in the lower spine (above the ankle), that caused the loss of use of his feet, the intent of the policy language is satisfied. This, however, is a strained construction

Ret. Plan, 905 F.2d at 798 (interpreting ERISA plan under federal common law); Travelers Ins. Co. v. Burchett, 841 F.2d 155, 157 (6th Cir. 1988); Horvatin v. Allstate Life Ins. Co., 848 F.2d 1012, 1013 (9th Cir. 1988); Francis v. INA Life Ins. Co. of New York, 809 F.2d 183 (2nd Cir. 1987); Becktell v. Allstate Life Ins. Co., 648 F.Supp. 977, 979 (E.D.Mich. 1986) *aff'd,* 838 F.2d 1215 (6th Cir. 1988); Perry v. Connecticut General Life Ins. Co., 531 F.Supp. 625, 626-627 (E.D. Va. 1982); Suarez v. Life Ins. Co. of North America, 254 Cal. Rptr. 377, 380-382 (Cal.App. 1988); Farthing v. Life Insurance Company of North America, 500 N.E.2d 767 (Ind.App. 1986); Harris v. Prudential Ins. Co. of America, 501 N.E.2d 77, 78 (Ohio App. 1986); Alvarado v. Pilot Life Ins. Co., 663 S.W.2d 108, 110 (Tex.App. 1983) writ refused n.r.e.; Juhlin v. Life Ins. Co. of North America, 301 N.W.2d 59, 60 (Minn. 1980); Boyes v. Continental Ins. Co., 139 Ga. App. 609, 229 S.E.2d 75, 76-77 (1976); Sitzman v. John Hancock Mutual Life Insurance Co., 522 P.2d 872, 875 (Or. 1974).

The majority view has been adopted by a federal district court interpreting Oklahoma law in Traverse v. World Life Ins. Co., 436 F.Supp. 810, 811-812 (W.D. Okla. 1977). In the case of Great Northern Life Ins. Co. v. Tulsa Cotton Oil Co., 182 Okla. 107, 76 P.2d 913 (1938), the Oklahoma court concluded that loss of use of a hand was not covered when the policy defined loss as "dismemberment between the wrist and elbow joint." Although the

---

contrary to the unambiguous policy language.

majority view in state courts does not dictate federal common law, the Court concludes the majority view is the more persuasive because it is true in its interpretation of the clear and unambiguous language of the insurance policy and thus expresses the intent of the settlor.

There is a minority view that in substance equates loss of use with severance. Neer v. Fireman's Fund American Life Ins. Co., 692 P.2d 830 (Wash. 1985); Mifsud v. Allstate Ins. Co., 456 N.Y.S.2d 316 (1982); Stanley v. Safeco Ins. Co. of America, 747 P.2d 1091 (Wash. 1988); and Bauer v. Kar Products, Inc., 749 P.2d 1385 (Mont. 1988). The minority view by circuitous reasoning arrives at a result contrary to the clear unambiguous language of the policy. The Court concludes the majority view is the more acceptable because it is true in its interpretation of the clear and unambiguous language of the insurance policy and thus expresses the intent of the settlor.

For the reasons stated above, the Motion for Summary Judgment of the Defendants, Chrysler Corporation and Aetna Life Insurance Company, is hereby SUSTAINED and the Motion for Summary Judgment of the Plaintiff, Marc Henretta, is hereby OVERRULED. A separate Judgment in keeping with the Court's order as expressed herein will be filed contemporaneously.

DATED this 10th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARC HENRETTA, an individual, Plaintiff,	)	
v.	)	No. 91-C-291-B
CHRYSLER CORPORATION, a Delaware corporation, and METROPOLITAN LIFE INSURANCE COMPANY, a foreign corporation, Defendants.	)	

J U D G M E N T

In keeping with the Order Sustaining the Motion for Summary Judgment of the Defendants, Chrysler Corporation and Metropolitan Life Insurance Company, Judgment is hereby rendered in favor of the Defendants, Chrysler Corporation and Metropolitan Life Insurance Company, and against the Plaintiff, Marc Henretta, and Plaintiff's action is hereby dismissed. The Defendants are entitled to costs as the prevailing party if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys fees.

DATED this 10th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-592-B
	)	
CHAD F. STITES, et al,	)	
	)	
Defendants.	)	

and

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-613-B
	)	
CHAD F. STITES, et al,	)	Consolidated
	)	
Defendants.	)	

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed December 4, 1991, in which the Magistrate Judge recommended that plaintiff's Motion for Leave to Enter Deficiency Judgment be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that plaintiff is granted a deficiency judgment in the amount of $8,748.57 less $2,400.00 [$6,400.00 fair market value as determined by the court less $4,000.00 in proceeds from the sheriff's sale], or **$6,348.57**, plus interest and costs from February 1, 1990, in Case No. 89-C-613-B.

It is further Ordered that plaintiff is granted a deficiency judgment in the amount of $9,244.57 less $2,500.00 [$4,500.00 fair market value as determined by the court less $2,000.00 in proceeds from the sheriff's sale], or **$6,744.57**, plus interest and costs from April 16, 1990, in Case No. 89-C-592-B.

Dated this 10 day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-592-B
	)	
CHAD F. STITES, et al,	)	
	)	
Defendants.	)	

and

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-613-B
	)	
CHAD F. STITES, et al,	)	Consolidated
	)	
Defendants.	)	

JUDGMENT

The court has for consideration the Report and Recommendation of the Magistrate Judge filed December 4, 1991, in which the Magistrate Judge recommended that plaintiff's Motion for Leave to Enter Deficiency Judgment be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

Judgment in favor of plaintiff is hereby entered in the amount of $6,348.57, plus interest and costs from February 1, 1990, in Case No. 89-C-613-B.

Judgment in favor of plaintiff is hereby entered in the amount of $6,744.57, plus interest and costs from April 16, 1990, in Case No. 89-C-592-B.

Dated this 10 day of January, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-592-B
	)	
CHAD F. STITES, et al,	)	
	)	
Defendants.	)	

and		
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	89-C-613-B
	)	
CHAD F. STITES, et al,	)	Consolidated
	)	
Defendants.	)	

ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed December 4, 1991, in which the Magistrate Judge recommended that plaintiff's Motion for Leave to Enter Deficiency Judgment be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that plaintiff is granted a deficiency judgment in the amount of $8,748.57 less $2,400.00 [$6,400.00 fair market value as determined by the court less $4,000.00 in proceeds from the sheriff's sale], or **$6,348.57**, plus interest and costs from February 1, 1990, in Case No. 89-C-613-B.

It is further Ordered that plaintiff is granted a deficiency judgment in the amount of $9,244.57 less $2,500.00 [$4,500.00 fair market value as determined by the court less $2,000.00 in proceeds from the sheriff's sale], or **$6,744.57**, plus interest and costs from April 16, 1990, in Case No. 89-C-592-B.

Dated this 10 day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SHAWN D. YOUNGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	91-C-807-B
	)	
CAPT. CHERRY, et al,	)	
	)	
Defendants.	)	

ORDER

This order pertains to plaintiff's Motion to Dismiss Without Prejudice (Docket #4)[1]. Having considered the motion, the court finds that it should be granted.

It is therefore ordered that plaintiff's Motion to Dismiss Without Prejudice is granted. Defendants' Motion to Stay Proceedings and Request for Order Requiring Special Report (Docket #2) is moot.

Dated this 9th day of Jan, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES L. FISK,

Plaintiff ,

vs.

MISS JACKSONS, A Division of FISHERCORP, an Oklahoma corporation; MALCOLM P. HAMMOND; DANIEL J. BOUDREAU, District Judge for the State of Oklahoma; and the TRIAD BANK, Garnishee,

Defendants.

No. 91-C-963-B

O R D E R

Pursuant to the settlement agreement referenced in the attached Order of the District Court of Tulsa County in the State of Oklahoma, dated January 7, 1992, the Court hereby dismisses this action with prejudice.

IT IS SO ORDERED, this 9th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

MISS JACKSONS, A DIVISION OF FISHERCORP, AN OKLAHOMA CORP.,	)	
Plaintiff,	)	
vs.	)	Case No. CJ 91-4145
JAMES L. FISK,	)	
Defendant.	)	

ORDER

NOW on this 2nd day of January, 1992, the Defendant's Motion to set aside default judgment comes on for hearing before the undersigned District Judge. Present was Malcom P. Hammond, Attorney for Plaintiff, and James L. Fisk, pro se. The Court having noted the agreement of the parties as indicated by the respective signatures hereon finds that the Defendant's Motion to vacate judgment shall be dismissed. The Plaintiff shall retain the $1,169.84 currently held by the Tulsa County Court Clerk, pursuant to garnishment order to Triad Bank, and said funds shall be full settlement of all Plaintiff's claims against Defendant James L. Fisk, and Plaintiff shall file a release and satisfaction immediately upon the signing of this Order.

In addition, the Court finds that as a part and parcel of the settlement agreement, the Defendant, James L. Fisk, will dismiss all other actions pending in this matter to include his Counterclaim in this present case, which is hereby dismissed, and his Federal Court actions in United States District Court for the Northern District of Oklahoma, Case No. 91-C0963E.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion to vacate default judgment is dismissed, Defendant's Counterclaim in the instant action is dismissed, and the Plaintiff shall file a release and satisfaction indicating full settlement of this matter upon payment by the District Court of the $1,169.84 now held therein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as a part and parcel of this agreement the Defendant will dismiss all Federal Court actions involving these parties and others revolving from the same suit.

DANIEL J. BOUDREAU

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

MALCOM P. HAMMOND
Attorney for Plaintiff

JAMES L. FISK
Defendant, pro se

I, Don E. Austin, Court Clerk, for Tulsa County Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument here-with set out as appears of record in the Court Clerk's Office of Tulsa County, Oklahoma, this 7 day of Jan 19 92

By _____ Deputy

Don E. Austin
Court Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NORMA JEAN PAYNE,

Plaintiff,

vs.

UNION PACIFIC RAILROAD, KERSHAW MANUFACTURING COMPANY, INC., TIMOTHY R. SYKES, and STEPHEN K. SMITH,

Defendants.

No. 91-C-754-E

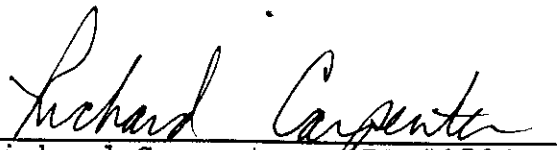
STIPULATION OF DISMISSAL

COME NOW the parties to the above-captioned action, by and through their respective attorneys, and stipulate that the above action has been compromised and settled and that the action is to be dismissed with prejudice as to its refiling.

Respectfully submitted,

Stratton Taylor, OBA #10142
CARLE,HIGGINS, MOSIER & TAYLOR
Post Office Box 1267
Claremore, Oklahoma 74018
(918) 341-2131
ATTORNEYS FOR PLAINTIFF

Tom L. Armstrong, OBA #329
David S. Landers, OBA #12367
Jeannie C. Henry, OBA #12331
TOM L. ARMSTRONG & ASSOCIATES
601 South Boulder, Suite 706
Tulsa, Oklahoma 74119
(918) 587-3939
ATTORNEYS FOR DEFENDANTS
UNION PACIFIC RAILROAD CO.,
TIMOTHY R. SYKES & STEPHEN K.
SMITH



Richard Carpenter, OBA #1504
SANDERS & CARPENTER
624 South Denver, Suite 202
Tulsa, Oklahoma 74119
(918) 582-5181
ATTORNEYS FOR DEFENDANT
KERSHAW MANUFACTURING CO.

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KANSAS CITY FIRE & MARINE INSURANCE COMPANY,

Plaintiff,

v.

MATHEW DOUGLAS, et al,

Defendants,

and

SAND SPRINGS INDEPENDENT SCHOOL DISTRICT #2,

Defendant and Third Party Plaintiff,

v.

SHELTER MUTUAL INSURANCE COMPANY,

Third Party Defendant.

90-C-874-C

FILED

JAN 9 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This order pertains to Defendant Sand Springs Independent School District #2's Application for Attorney Fees and Costs (Docket #35)[1], Third Party Defendant Shelter Mutual Insurance Company's Application for Attorney Fees (#38), and Defendant Sand Springs Independent School District #2's Application for Attorney Fees and Costs From Third-Party Defendant (#40). This court has entered an amended judgment in favor of defendant and third party plaintiff Sand Springs Independent School District #2 against

[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

plaintiff, Kansas City Fire & Marine Insurance Company, in favor of defendant Jim Jackson against plaintiff, Kansas City Fire & Marine Insurance Company, and in favor of third party defendant Shelter Mutual Insurance Company against third party plaintiff, Sand Springs Independent School District #2.

Sand Springs Independent School District #2 has prevailed as against Kansas City Fire and Marine Insurance Company and lost as against Shelter Mutual Insurance Company. The School District is therefore entitled to recover a reasonable attorney's fee from Kansas City Fire and Marine, but must pay a reasonable attorney's fee to Shelter. Title 36 O.S. § 3629(B).

The Supreme Court in Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 259 (1975), ruled that state law regarding attorney fees should be followed in a federal diversity case. The Tenth Circuit in An-Son Corp. v. Holland-America Ins. Co., 767 F.2d 700, 703 (10th Cir. 1985), applied 36 O.S. § 3629(B) and required the insurance company which lost a declaratory judgment action regarding contractual coverage to pay attorney fees to the insured who was the prevailing party. The court determined that it would be unfair to allow an insurer to force an insured to bear the expense of a declaratory judgment action that the insurer lost.

The Tenth Circuit has established the steps to be followed in determining fee awards. In Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983), the court said that the first step was to determine the number of hours reasonably spent by counsel for the party seeking the fees, based on time records presented by the attorney. Id. at 553.

> In determining what is a reasonable time in which to perform a given task ... the court should consider that what is reasonable in a particular case can

> depend upon factors such as the complexity of the case, the number of reasonable strategies pursued, and the responses necessitated by the maneuvering of the other side.

Id. at 554.

The second step was to set a rate of compensation for the hours expended by determining what lawyers of comparable skill and experience practicing in the area in which litigation occurs would charge. Id. at 555. "[T]he fee rates of the local area should be applied even when the lawyers seeking fees are from another area." Id. The fee award thus determined may be enhanced in cases in which the success achieved by the attorney was exceptional. Id. at 557. Expenses should be allowed as fees only if such expenses are usually charged separately in the area. Id. at 559.

The Oklahoma Supreme Court dealt with the issue of the proper procedure for establishing reasonable attorney fees in State Ex Rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979). The court stated that the following factors should be considered in arriving at a just compensation for work done by attorneys: time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorneys, the "undesirability" of the case, the nature and length of the professional relationship with the client, and awards in similar cases. Id. at 661.

Counsel for defendant, Sand Springs Independent School District #2, has submitted

time records showing 37.75 hours of work on this case. Counsel for third party defendant, Shelter Mutual Insurance Company, has submitted time records showing 61.85 hours of work on this case. The court finds the number of hours reported by counsel for Shelter Mutual Insurance Company to be excessive, upon consideration of the complexity of this case, the strategy pursued, and the responses necessary. Forty hours was an amount reasonably spent by counsel for Shelter Mutual Insurance Company.

The hourly rates of compensation set out in the applications for fees are reasonable. Defendant Sand Springs Independent School District #2's Application for Attorney Fees and Costs (#35) is granted. Plaintiff, Kansas City Fire & Marine Insurance Company is ordered to pay to defendant, Sand Springs Independent School District #2, attorney fees and costs in the amount of $3,323.86.

Third Party Defendant Shelter Mutual Insurance Company's Application for Attorney Fees (#38) is granted, but the amount of attorney fees sought is reduced by 21.85 hours at an hourly rate of $110.00, or $2,403.50. Third party plaintiff, Sand Springs Independent School District #2, is ordered to pay to third-party defendant, Shelter Mutual Insurance Company, attorney fees and costs in the amount of $5,195.75.

Defendant Sand Springs Independent School District #2's Application for Attorney Fees and Costs From Third-Party Defendant (#40) is denied.

Dated this 9th day of January, 1992.

JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NANCY L. TRENNERY,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

No. 90-C-444-B

J U D G M E N T

In accord with the Order filed January 7, 1992 sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Internal Revenue Service, and against the Plaintiff, Nancy L. Trennery. Plaintiff shall take nothing of her claim. Costs are assessed against the Plaintiff, if timely applied for, and both parties are to pay their respective attorney's fees.

Dated, this 9th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BERTHA GOFF)
)
Plaintiff(s),)
v.)
)
AMERICAN AIRLINES, INC., et al) No. 90-C-0450-E
)
Defendant(s).)

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed October 23, 1991 in which the Magistrate Judge recommended that Plaintiff's Fourth Cause of Action and that portion of her Third Cause of Action which purports to make claim for "invasion of privacy" be dismissed without prejudice.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that Plaintiff's Fourth Cause of Action and that portion of her Third Cause of Action which purports to make claim for "invasion of privacy" is dismissed without prejudice.

Dated this 9th day of January, 1992.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ADAM WAYNE STERLING,	)	
	)	
Plaintiff,	)	
	)	
v.	)	90-C-660-B
	)	
WILLIAM SANDERSON, et al,	)	
	)	
Defendants.	)	

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed December 13, 1991 in which the Magistrate Judge recommended that this case be dismissed pursuant to Rule 16 of the Federal Rules of Civil Procedure because Sterling did not appear.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that this case is dismissed pursuant to Rule 16 of the Federal Rules of Civil Procedure because Sterling did not appear.

Dated this 9th day of June, 1992.

THOMAS R. BRETT,
UNITED STATES DISTRICT JUDGE

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EARP, DENNIS, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-704-B

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HOLT, RUFUS, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-707-B

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
Northern District of Oklahoma

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HUNT, RICHARD, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-843-B

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KASTEN, GEORGE, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-836-B

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KAHLER, LELAND, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-807-B

FILED

JAN 08 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
Northern District of Oklahoma

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MASTERSON, HEDY,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-906-B

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed. The dismissal is with prejudice.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MD01
GOA-MD-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRADEN, VERNA,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-905-B

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

The dismissal is with prejudice.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MDO1
GOA-MD-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PHILLIPS, JACK, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-888-B

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

s/ THOMAS R BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IRA ROY DENMAN, Plaintiff and
DONNA MAXINE DENMAN, Plaintiff's spouse,

Plaintiffs,

vs.

GEORGIA TALC CORP., et al.,

Defendants.

No. 88-C-931-B

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed. The dismissal is with prejudice.

S/ THOMAS R. BRETT
U.S. DISTRICT JUDGE

GOAL-D20/DEN-MDO1

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

McAFFREY, JAMES, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1272-B

FILED

JAN 0 8 1993

Richard M Lawrence, Clerk
U.S. District Court
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARGRETTE CARROLL,

Plaintiff,

vs.

CHARLES H. OSTRANDER, individually, THE JAMES R. CARROLL, M.D., INC. PENSION PLAN; THE PROFIT SHARING PLAN OF JAMES R. CARROLL, M.D., INC., LISA L. CARROLL, an individual; JAMES R. CARROLL, JR., an individual; and BRENT T. CARROLL, an individual,

Defendants.

No. 90-C-736-B

O R D E R

The Court has for decision the post-jury trial Motion for Judgment as a Matter of Law and Alternative Motion for New Trial by Plaintiff, Margrette Carroll. The Defendants, Lisa L. Carroll, James R. Carroll, Jr., and Brent T. Carroll, filed a counterclaim herein alleging fraudulent conduct on the part of the Plaintiff, Margrette Carroll, regarding her beneficiary claims to the subject proceeds of two ERISA plans of Dr. James R. Carroll, M.D., Inc., Margrette Carroll is the surviving spouse of Dr. James R. Carroll, M.D. and the three counterclaiming Defendants are surviving adult children of Dr. James R. Carroll by a previous marriage. The fraud issues were tried to a jury on the dates of December 9, 10, 11 and 12, 1991. After being duly instructed, the jury returned a verdict on December 12, 1991, filed of record herein, and found fraud on the part of Margrette Carroll regarding the estate plan of James R. Carroll, Deceased, and her claimed beneficiary rights under the two

ERISA plans, and the subject Shearson Lehman joint account with right of survivorship.

After a thorough review of the trial record, the Court concludes that factual issues were presented regarding the Defendants' counterclaims for fraud and that the jury was properly instructed regarding same. Therefore, the jury's verdict and interrogatory answers are supported by the evidence and the applicable law so the Motion for Judgment as a Matter of Law and Alternative Motion for New Trial by Plaintiff, Margrette Carroll, should be and is hereby OVERRULED.

DATED this 8th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BLACK, NAOMI,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1139-B

FILED

JAN 08 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed. The dismissal is with prejudice.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MD01
GOA-MD-V1-2

GLH/ta
12/11/91

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WARD, J. D., et al.,	)	No. 88-C-980-B
Plaintiff(s),	)	
vs.	)	
ANCHOR PACKING COMPANY, et al.,	)	
Defendants.	)	

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ THOMAS R. BRETT
U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

Entered

FILED

JAN -8 1992

DONALD L. BOSHEARS

Plaintiff,

vs.

HOMESTEAD PRODUCTS, INC., a Michigan corporation; BERNARD L. ROBINSON and RUTH ANN ROBINSON

Defendants.

No. 91-C-230-C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is the motion of the plaintiff for clarification of the Court's Order of July 31, 1991. This is an action alleging various causes of action arising out of a 1983 contract between plaintiff and defendant Homestead Products, Inc. (Homestead). Plaintiff also sues the individual defendants, officers of Homestead, on a personal guarantee. Defendants Robinson filed a motion to dismiss for lack of personal jurisdiction on May 1, 1991. On the same date, a motion was filed headed Defendants' motion to dismiss for failure to state a claim upon which relief can be granted and, in the alternative, for an order compelling arbitration and staying the action. The body of the motion likewise makes clear that it is on behalf of all three defendants. Nowhere was it stated that the Robinsons viewed the jurisdictional motion as primary. Upon review, the court found the issue of arbitration to be dispositive and entered an Order on July

31, 1991 ordering arbitration of the dispute. From plaintiff's motion and the parties' status reports, it is clear that the Robinsons are refusing to participate in arbitration, on the basis that they are not parties to the contract.[1]

In their status report, defendants state: "The defendants did file motions. The defendant, Homestead Products, Inc., directed its motion to arbitration. The individual Defendants, Robinsons, directed their motion to a lack of personal jurisdiction over them." As demonstrated above, this statement is false. The motion involving arbitration was made on behalf of all defendants.

Plaintiff asks the Court to find that the Robinsons have waived an objection to arbitration. However, the Court can hardly do so when a motion to dismiss remains pending, however misleadingly the arbitration motion was presented. Therefore, the jurisdictional motion will be addressed on its merits.

---

[1]*Relevant passages from defendants' May 1, 1991 Brief are as follows:*

In his fifth claim for relief, Plaintiff seeks recovery against Defendants Bernard L. Robinson and Ruth Ann Robinson based upon a purported guarantee. This claim for relief is obviously subject to arbitration as well. The only basis for relief which Plaintiff might claim under the fifth claim for relief would be as alleged in Paragraph 31 of the fifth claim for relief if HPI, in fact, is in default under the Agreement or committed the torts referred to in the second and third claims for relief. As noted above, all of the first four claims for relief must be submitted to arbitration and, accordingly, until the arbitration is completed there would be no way to determine whether the Robinsons would be liable under Plaintiff's theory based upon the guarantee.

(pg. 6).

It is uncontroverted that plaintiff and HPI executed the Agreement which contained a very broad arbitration clause pursuant to which plaintiff agreed to submit all controversies which even relate to the Agreement to arbitration.

(pg. 7) (emphasis in original).

Because the issues set forth in plaintiff's complaint must first be submitted to arbitration, this action should be dismissed or alternatively the action should be stayed until the arbitration is completed.

(pg. 7) (emphasis added).

The Robinsons assert that they lack sufficient minimum contacts with Oklahoma for this Court to exercise personal jurisdiction over them. In the present posture of the case, this Court is required to resolve all factual disputes in plaintiff's favor, and the plaintiff is only required to make a prima facie showing of jurisdiction. Williams v. Bowman Livestock Equip. Co., 927 F.2d 1128, 1130 (10th Cir. 1991). The Robinsons have submitted an affidavit which states that they are residents of Michigan, at no time have been residents of Oklahoma, do not own real property in Oklahoma, and that the personal guarantee involved was executed in Michigan. Plaintiff responds with his own affidavit which states that Bernard Robinson came to Tulsa in the Spring of 1986 and Ruth Ann Robinson came to Tulsa in the Spring of 1989 to deal with Homestead Matters. Further, that telephonic communications and letters passed between the Robinsons in Michigan and the plaintiff in Oklahoma regarding Homestead. Also, that a lock box receivable and general operating account was maintained in Tulsa which required the signature of one of the Robinsons in order to transfer monies to the general operating account.

Viewing the totality of circumstances, this Court finds that plaintiff has at least met his burden of a prima facie showing. Telephone calls and letters may provide sufficient contacts for the exercise of personal jurisdiction. Rambo v. Amer. Southern Ins. Co., 839 F.2d 1415, 1418 (10th Cir. 1988). However, the inquiry must be as to the nature of these and other contacts, and whether they demonstrate purposeful availment of the forum state by defendant. *Id.* at 1418-1420. The communications directed to

Oklahoma, coupled with the account in Oklahoma which the Robinsons controlled, demonstrate the requisite contacts.

It is the Order of the Court that the motion of the defendants Bernard and Ruth Robinson to dismiss for lack of personal jurisdiction is hereby denied.

It is the further Order of the Court that the motion of plaintiff to clarify the Court's Order of July 31, 1991 is hereby granted as detailed above.

The Court will not compel the Robinsons to submit to arbitration as individuals because they are not parties to the contract. Further, the outcome of the arbitration is a condition precedent to any liability on the Robinsons' part. Plaintiff seeks an award of attorney fees for the necessity of seeking clarification of the court's Order. While the Court does note that defendants now make a different representation to the Court than they previously did, the Court does not believe sanctions are warranted at this time. Therefore the request for fees is denied. Further filings by defendants will be strictly scrutinized.

IT IS SO ORDERED this 22nd day of January, 1992.

H. DALE COOK
United States District Judge

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PATTON, LINDSEY R., et al., Plaintiff(s), vs. ANCHOR PACKING COMPANY, et al., Defendants.	)	No. 88-C-1394-E

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KELSO, WILLIAM, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1082-E

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROOK, CLARENCE,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1050-E

FILED

JAN 06 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MD01
GOA-MD-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHNSON, DOYLE, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1032-E

FILED

JAN 08 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
Northern District of Oklahoma

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILBURN, EDWARD, et al.,	)	No. 88-C-1001-E
Plaintiff(s),	)	
vs.	)	
ANCHOR PACKING COMPANY, et al.,	)	
Defendants.	)	

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

[GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WATTERSON, CHARLES, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-978-E

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WEBBER, WOODROW,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-948-E

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MD01
GOA-MD-V1-2

GLH/ta
12/12/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BOBBY WILLLIAMS,

Plaintiff,

vs.

GEORGIA TALC CORP.,

Defendant.

No. 88-C-929-E

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

GOAL-P6/WIL-MDO1

GLH/ta
12/11/91

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FRED FAULKNER, Plaintiff and
MARGARET N. FAULKNER, Plaintiff's spouse,

Plaintiffs,

vs.

GEORGIA TALC CORPORATION, et al.,

Defendants.

No. 88-C-928-E

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

GOAL-F30/FAU-MDO1

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

McCOIN, JOHN,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-890-E

FILED

JAN 08 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MD01
GOA-MD-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WARNER, RICHARD, et al.,) No. 88-C-814-E
)
Plaintiff(s),)
)
vs.)
)
ANCHOR PACKING COMPANY, et al.,)
)
Defendants.)

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANDREWS, BRENDA, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-808-E

FILED

JAN 06 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BEEHLER, MARVIN, et al.,) No. 88-C-797-E
)
Plaintiff(s),)
)
vs.)
)
ANCHOR PACKING COMPANY, et al.,)
)
Defendants.)

FILED
JAN 08 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PERRY, PATRICK, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-719-E

FILED

JAN 0 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
Northern District Of Oklahoma

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HEMANN, EVERETT, et al.,)
)
Plaintiff(s),)
)
vs.)
)
ANCHOR PACKING COMPANY, et al.,)
)
Defendants.)

No. 88-C-701-E

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

FILED

JAN 0 8 1992

Stephen M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

TYREE, JOHN FREDERICK, et al.,	)	No. 88-C-699-E
Plaintiff(s),	)	
vs.	)	
ANCHOR PACKING COMPANY, et al.,	)	
Defendants.	)	

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

S/ JAMES O. ELLISON

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHERRY REAL ESTATE COMPANY, an Oklahoma Corporation, Plaintiff, vs. RESOLUTION TRUST CORPORATION as Receiver for Cimarron Federal Savings and Loan Association, Defendant.	Case No. 91-C-433-B

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Cherry Real Estate Company, and hereby dismisses its claims against the Defendant, Resolution Trust Corporation as Receiver for Cimarron Federal Savings Association, in the above-styled and numbered cause with prejudice to the refiling of the same.

Dated this 8th day of January, 1992.

CHERRY REAL ESTATE CORPORATION

BY: Earl K Cherry
Earl K. Cherry, President
4821 South Sheridan, Suite 225
Tulsa, OK 74145

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of January, 1992, a true and correct copy of the above and foregoing was mailed by United States regular mail, to: Larry G. Hurst, 301 N. W. 63rd Street, Suite 400, Oklahoma City, OK 73116, ATTORNEY FOR DEFENDANT, Resolution Trust Corporation as Receiver for Cimarron Federal Savings and Loan Association.

Earl K Cherry
Earl K. Cherry

cherry.dwp

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LaDUKE, NAYDEEN,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 89-C-162-B

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed. The dismissal is with prejudice.

S/ THOMAS R. BRETT

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MDO1
GOA-MD-V1-2

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BOOKER T. SHEPHARD,

Petitioner,

vs.

RON CHAMPION, Warden; ATTORNEY GENERAL, for the State of Oklahoma,

Respondents.

No. 90-C-42-C

ORDER

Before the Court is the objection of petitioner to the Report and Recommendation of the United States Magistrate Judge and petitioner's motion for relief. By Order and Judgment dated June 11, 1991, the Tenth Circuit remanded this habeas corpus proceeding regarding the issue of denial of due process. Petitioner alleges that the state trial court completely failed to instruct on an essential element of the offense (here, felonious intent as an essential element of the offense of Larceny of Domestic Animals). The Tenth Circuit also noted that the claim was held to be procedurally barred by the Oklahoma Court of Criminal Appeals. In a subsequent Order, dated July 17, 1991, the Tenth Circuit stated that "the district court's first order of business should be to determine whether petitioner demonstrated cause and prejudice sufficient to overcome the state court's procedural bar of this claim."

In his Report and Recommendation, the Magistrate Judge did not pursue this "first order of business" but instead made only the factual inquiry as to the jury instructions. The Court will follow the Tenth Circuit's directive.

Under Harris v. Reed, 489 U.S. 255 (1989), when the last state court of review clearly holds that a federal constitutional issue has been forfeited due to a violation of state procedural rules, and the finding rests on adequate and independent state law grounds, then such a finding of procedural default bars federal habeas review of the federal claim, unless the petitioner can demonstrate "cause" for his procedural default and "prejudice attributable thereto", or that the failure to consider the federal claim will result in a "fundamental miscarriage of justice". See Shafer v. Stratton, 906 F.2d 506, 509 (10th Cir.), cert. denied, 111 S.Ct. 393 (1990). In Murray v. Carrier, 477 U.S. 478 (1986), the Supreme Court stated that "the mere fact that counsel failed to recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it, does not constitute cause for a procedural default." *Id.*at 486-87. While ineffective assistance of counsel does constitute cause for a procedural default, the Court "generally requires that [such a claim] be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default." *Id.* at 489. Upon review, the Court does not find petitioner's counsel to have been ineffective under the standard of Strickland v. Washington, 466 U.S. 668 (1984). The Court finds that this determination can be made from the record. See Andrews v. Deland, 943 F.2d 1162,

1185 (10th Cir. 1991). Even assuming cause has been demonstrated, prejudice has not been. No showing has been made that the petitioner was denied "fundamental fairness" at trial. See Murray, 477 U.S. at 494. Finally, petitioner has not alleged facts bringing him within the "fundamental miscarriage of justice" exception. See Gilbert v. Scott, 941 F.2d 1065, 1068 n.2 (10th Cir. 1991).

Assuming arguendo that the Court is incorrect in its application of the "cause and prejudice" standard, the Court agrees with the Magistrate Judge's factual findings and legal conclusion regarding the jury instructions. From the copy of the instructions presented by petitioner, it is clear that the trial court did instruct the jury as to the element of intent. Of course, this finding lends further support to the conclusion that petitioner's claim of ineffective counsel is without merit.

It is the Order of the Court that petitioner's objection to the Report and Recommendation of the Magistrate Judge and petitioner's motion for relief are hereby denied. The Magistrate Judge's Report and Recommendation is hereby affirmed. Petitioner's petition for writ of habeas corpus is hereby denied.

IT IS SO ORDERED this 7th day of January, 1992.

H. DALE COOK
United States District Judge

entered

FILED

JAN -8 1992

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM GENERAL INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 89-C-871-C
URIAH ST. LEWIS and AMANDA ST. LEWIS, husband and wife,	)	
Defendants.	)	

ORDER

Before the Court is the motion of the defendants to determine prevailing parties. This action involved an insurance company's refusal to pay defendants' claim for fire loss. After eleven trial days, the jury found in favor of plaintiff, finding that defendants had practiced concealment or fraud, thus voiding the policy.

In due course, plaintiff moved for an assessment of costs, expenses and attorney fees. Defendants then filed the present motion, contending that they are the prevailing parties by statute. The statute relied upon by both parties is 36 O.S. §3629(B), which provides in pertinent part:

> It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to the insured within ninety (90) days of receipt of that proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party.

Defendants argue that since plaintiff failed to make any written offer of settlement or rejection of the claim within ninety days,

defendants are the prevailing parties. Plaintiff responds by noting the following: plaintiff received the proof of loss on March 1, 1989 and plaintiff responded by letter on May 25, 1989 (i.e., within ninety days). The letter asserted that defendants had failed to provide all records and documents, and refused to answer certain questions under oath, as required by the insurance policy. The letter further states:

> State Farm General Insurance Company is not denying your claim at this time; however, as you have breached the terms and conditions of the policy, we are, at this time, declining to make payment.

The claim was ultimately denied on June 15, 1990. Plaintiff argues that it complied with §3629(B) as best it could without the critical information not provided by defendants. The Court agrees.

It is established that "statutory provisions shall be liberally construed to promote their object." Amoskeag Sav. Bank v. Eppler, 77 P.2d 1158, 1161 (Okla. 1938); Republic Bank & Trust Co. of Tulsa v. Bohmar Minerals, Inc., 661 P.2d 521, 525 n.19 (Okla. 1983). The Supreme Court of Oklahoma has concluded that the statutory duty imposed by §3629(B) "recognizes that a substantial part of the right purchased by the insured is the right to receive benefits promptly." Lewis v. Farmers Ins. Co., Inc., 681 P.2d 67, 69 (Okla. 1983). However, promotion of this object is not achieved by permitting an insured to withhold information (which the jury found defendants did) and force an insurer to offer settlement or to reject a claim without full knowledge merely to meet an arbitrary ninety-day time limit. Therefore, the Court concludes that defendants are not the prevailing parties.

The question remains whether plaintiff qualifies as prevailing under the statute. The Supreme Court of Oklahoma states:

> The insurer is the prevailing party only when the judgment is less than any settlement offer that was tendered to the insured, or when the insured [sic] rejects the claim and no judgment is awarded.

Shinault v. Mid-Century Ins. Co., 654 P.2d 618, 619 (Okla. 1982).

Here, the insurer rejected the claim, and the jury found no liability on the insurer's part. Accordingly, plaintiff qualifies as the prevailing party.

It is the Order of the Court that the motion of the defendants to determine prevailing party is hereby resolved in favor of plaintiff. Plaintiff is hereby deemed the prevailing party.

IT IS SO ORDERED this 8th day of January, 1992.

H. DALE COOK
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CHARLES B. HUMPHREY, d/b/a HUMPHREY OIL INTERESTS,

Plaintiff,

v.

PUBLIC SERVICE COMPANY OF OKLAHOMA,

Defendant.

Case No. 91-C-574-B

JUDGMENT

The captioned matter came before the Court Clerk this date for judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure. The Court Clerk, having reviewed the court file and being fully advised in the premises, finds that an offer of judgment was made by the defendant, Public Service Company of Oklahoma, pursuant to Rule 68, in the amount of $420,000, inclusive of pre-judgment interest, costs, and attorney fees and that the offer was timely accepted by plaintiff, Charles B. Humphrey, d/b/a Humphrey Oil Interests, as evidenced by the Affidavit of Dale Joseph Gilsinger, counsel of record for plaintiff, filed of record herein. Based upon these findings in the court file, judgment should be entered in favor of plaintiff in accordance with the offer of judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff, Charles B. Humphrey, d/b/a Humphrey Oil Interests, have and recover judgment of and from defendant, Public Service Company of Oklahoma,

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for the sum of $420,000, which amount is inclusive of pre-judgment interest, costs, and attorney fees.

Dated this 7 day of January, 1992.

Beverly McCullough Acting Clerk for
Richard M. Lawrence, Clerk
United States District Court
Northern District of Oklahoma

PREPARED BY:

Dale Joseph Gilsinger, OBA #10821
ALBRIGHT & GILSINGER
2601 Fourth Nat'l Bank Bldg.
15 West Sixth Street
Tulsa, Oklahoma 74119
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010291L3 (lit#16/2440.02)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LAWRENCE G. LEATHERS, Plaintiff,	)	
vs.	)	Case No. 91-C-228-E
AMERICAN AIRLINES, INC., and GEORGE RILEY, Defendants.	)	

JUDGMENT IN FAVOR OF AMERICAN AIRLINES, INC.

This matter came before the Court on December 18, 1991, for consideration of the Motion for Summary Judgment filed by the Defendant, American Airlines, Inc, and the Motion to Remand filed by the Plaintiff, Lawrence G. Leathers. The Motion to Remand is denied. The Court finds that no material issues of fact are in dispute which would prevent entry of summary judgment in this action. The Court further finds that the Plaintiff's claims against American Airlines, Inc. constitute an improper collateral attack against the judgment entered in favor of the Defendants in a previous state court action styled *Lawrence G. Leathers vs. Margaret McMeakin, George E. Riley, American Airlines, Inc. and Royal Travel Services, Inc.*, District Court of Tulsa County, Oklahoma, Case No. CJ-86-3258. Therefore, summary judgment should be entered against the Plaintiff and in favor of the Defendant, American Airlines, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of the Defendant, American Airlines, Inc. and against the Plaintiff, Lawrence G. Leathers.

IT IS SO ORDERED this 7th day of January, 1992.

/s/ JAMES O. ELLISON

James O. Ellison,
United States District Judge

Approved As To Form and Content:

Walter Benjamin
Counsel for Plaintiff

Teresa A. Meinders
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 7 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LAWRENCE G. LEATHERS,

Plaintiff,

vs.

AMERICAN AIRLINES, INC., and GEORGE RILEY,

Defendants.

Case No. 91-C-228-E

DISMISSAL WITHOUT PREJUDICE

The Defendant, George E. Riley, is hereby dismissed from this action without prejudice upon the Plaintiff's Motion. The Court finds that George E. Riley was never served and that the 120 days for service of process has expired.

Therefore, the Plaintiff's claims against George E. Riley are hereby dismissed without prejudice.

DATED this 7th day of January, 1992.

S/ JAMES O. ELLISON

James O. Ellison,
United States District Judge

Approved As To Form and Content:

Walter Benjamin
Counsel for Plaintiff

Teresa A. Meinders
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SUN INSURANCE COMPANY OF NEW YORK,

Plaintiff,

vs.

FLINT INDUSTRIES, INC.,

Defendant.

Case No. 91-C-145-B

ORDER

NOW on this 7th day of Jan., 1992, this cause comes on before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma upon the filing of the Stipulation of Dismissal with Prejudice; and the Court being fully advised in the premises, finds that said Stipulation of Dismissal with Prejudice should be granted and this case dismissed with prejudice to the refiling thereof.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Stipulation of Dismissal with Prejudice be and the same is hereby granted.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE C. LEAVERTON,

Plaintiff,

vs.

CHEROKEE BUMPER EXCHANGE COMPANY,

Defendant.

Case No. 91-C-750-B

ORDER

Pursuant to the parties' Stipulation of Dismissal and for good cause shown, this matter is hereby dismissed with prejudice.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

THOMAS R. BRETT, U.S. District Judge

/pjc/1228.ord

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAYNARD O. WILEY AND VELMA L. WILEY, Plaintiffs,	)	
vs.	)	Case No. 91-C-125-B
TIME INSURANCE COMPANY, a corporation, ALBERT DARRELL SMITH, an individual, and PIEDMONT AMERICAN LIFE INSURANCE COMPANY, a corporation, Defendants.	)	

ORDER OF DISMISSAL OF DEFENDANT,
PIEDMONT AMERICAN LIFE INSURANCE COMPANY

The Court, having before it the written Stipulation for Dismissal of Defendant Piedmont American Life Insurance Company with prejudice signed by Plaintiffs and Defendant Piedmont American Life Insurance Company, finds that based upon the agreement of the Plaintiffs and Defendant Piedmont American Life Insurance Company, the stipulation for dismissal of Defendant Piedmont American Life Insurance Company with prejudice should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaints, counterclaims, cross-complaints, and all other causes of action of any type between Plaintiffs, Maynard O. Wiley and Velma L. Wiley, and Defendant, Piedmont American Life Insurance Company, only, filed with respect to this action should be and the same are hereby dismissed with prejudice to refiling.

IT IS SO ORDERED this 7th day of January, 1992.

S/ THOMAS R. BRETT

Thomas R. Brett
Judge of the United States District Court for the Northern District of Oklahoma

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALLSTATE INSURANCE COMPANY, Plaintiff,	)	CIVIL ACTION
vs.	)	Case No. 89-C-544-B
BETTY L. CORN T/A CORN'S WESTERN WEAR, Defendant.	)	

JUDGMENT

AND NOW, this 7 day of Jan., 1992, upon consideration of the Stipulation executed by the parties hereto, judgment is hereby entered in favor of Plaintiff and against Defendant in the amount of Fifty Thousand Dollars ($50,000.00), together with interest on Plaintiff's Complaint and in favor of the Plaintiff and against the Defendant on Defendant's Counter-claim.

S/ THOMAS R. BRETT

HON. THOMAS R. BRETT, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NANCY L. TRENNERY,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

No. 90-C-444-B

O R D E R

Before the Court is the motion to dismiss or, in the alternative, motion for summary judgment filed by the defendant, the Internal Revenue Service (IRS).[1] The plaintiff brought this action under the Freedom of Information Act (FOIA), 5 U.S.C. §552, alleging that the IRS has arbitrarily and capriciously withheld the information requested by the plaintiff in ten separate FOIA requests. The IRS contends that it claims no exemption under 5 U.S.C. §552(b) and has released to the plaintiff all of the documents responsive to her requests, thereby entitling the IRS to summary judgment. The IRS also argues that the Court lacks subject matter jurisdiction over the seventh through tenth causes of action alleged in the complaint because the plaintiff failed to exhaust her administrative remedies.

As the plaintiff has not challenged the IRS' motion for summary judgment concerning her second, fourth, seventh, eighth and ninth causes of action, the Court finds that the facts presented by

[1] The Court addresses the motion as one for summary judgment as both parties have referenced exhibits outside the pleadings.

the IRS regarding those causes of action are undisputed. In reviewing those facts, the Court concludes that the IRS has provided plaintiff with all the information referenced in her second, fourth, seventh, eighth and ninth causes of action and these claims are now moot.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The IRS argues that it is entitled to summary judgment because the plaintiff has failed to provide any evidence to show that the IRS acted arbitrarily or capriciously in withholding documents or that the IRS did not provide the plaintiff with the information

demanded in her numerous FOIA requests. The Court agrees.

In her first cause of action the plaintiff alleges that the IRS failed to comply with her August 25, 1989 request for current copies of Training 2236-01 and Training 2236-02. (IRS Exhibit C).[2] Plaintiff states that she did not receive current instructions but instead received Training 2236-01 and 2236-02 instructions which were dated July 1981. Upon receipt of these documents, the plaintiff sent a follow-up letter stating that she had received outdated material, and requesting current copies of Training 2236-01 and 2236-02 under any new name, number or designation. (IRS Exhibit W). The IRS responded informing the plaintiff that "[t]here have been no revisions or updates to this material." (IRS Exhibit X).

The Court finds that the plaintiff has failed to present any evidence which disputes the statement of Gerard Gallick, an attorney with the Office of Assistant Chief Counsel of the IRS, that the "July, 1981 version of documents Training 2236-01 and Training 2236-02 is the current version." (Gallick Declaration ¶9(a)). To establish a genuine issue of material fact plaintiff must do more than vituperatively hypothesize that "[c]onsidering the millions of dollars the IRS has spent in updating their computer technology during the last ten years, it would defy credibility to suggest that the information plaintiff seeks does not exist." (Plaintiff's Response, p. 12). The Court, therefore,

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[2] All references to IRS Exhibits are to the exhibits attached to the Gerard Gallick declaration presented by the IRS in support of its motion for summary judgment.

concludes as a matter of law that the IRS has complied with the plaintiff's August 25, 1989 request.

In her third cause of action, the plaintiff alleges that the IRS failed to provide her with the numerical and subject indices of the Internal Revenue Manual as requested in her letter dated October 4, 1989. (IRS Exhibit G). When plaintiff received a copy of the Internal Management Document System Handbook Exhibit 200-5 in response to her request rather than the requested indices, she notified the IRS of her dissatisfaction and again requested the indices. (IRS Exhibit Y). The IRS then responded by letter dated November 14, 1990 requesting more time in which to "locate and consider releasing the Internal Revenue Service records to which you have requested access," and advising plaintiff of her right to appeal. (IRS Exhibit Z). Plaintiff filed an appeal on December 20, 1989. (IRS Exhibit AA). The IRS acknowledged receipt of the appeal by letter of February 7, 1990 and informed the plaintiff "[b]ecause the Office of Disclosure is still processing your request, we are holding your appeal in abeyance pending the Office of Disclosure's initial determination." (IRS Exhibit BB). Upon notification of the suit before this Court, the IRS submitted to the Department of Justice for release to the plaintiff the requested indices to the Internal Revenue Manual on July 20, 1990. (IRS Exhibit H). When plaintiff indicated in her First Set of Interrogatories that she had not received all the requested material and that certain provided copies were illegible, the IRS provided the Department of Justice for release to the plaintiff indices to the Chief Counsel

Directives Manual ("CCDM") as well as additional copies of the pages specified in the plaintiff's interrogatory number 8. (IRS Exhibits DD and FF).

After a thorough review of the records, the Court finds that the plaintiff has failed to present any evidence that disputes Gerard Gallick's declaration that the IRS complied with the plaintiff's request of October 4, 1989. Although it is clear from the letters in exhibit that the plaintiff did not receive the requested information until the IRS was notified of her pending suit, the Court concludes that the IRS has since provided the plaintiff with the requested indices.

In her fifth and sixth causes of action, plaintiff alleges that the IRS failed to provide her with copies of the regulations pertaining to the procedures for preparation, filing and processing of, as well as the delegation of authority to prepare, file and process, plaintiff's "Substitute for Return Prepared by Examination Division" and the delegation of authority to assess tax for the years 1981-86. The IRS had executed "substitute for returns" for the plaintiff, as authorized under 26 U.S.C §6020(b) and 26 C.F.R. §301.6020-1(b). The IRS executes a "substitute for return" when an actual return is not filed in order to determine whether a tax is due and to assess any applicable tax.[3] The plaintiff argues that

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[3] In its response of November 29, 1989, the IRS informed the plaintiff of the procedure for filing "substitute for returns":

> Please be advised, the assessments made on your account were based on information from different sources that you had income which was taxable. Once a determination is made that tax is due, an assessment is made on your

because the regulations do not state the chain of authority from the Secretary of the Treasury to the district director to execute these "substitute for returns," there must be governing internal procedures.

In her November 3, 1989 FOIA request, the plaintiff sought the regulations relating to these procedures. (IRS Exhibit HH). The IRS answered on November 29, 1989 informing the plaintiff that the IRS is "not required to perform research for the purpose of determining if there is a delegation order applicable to your request," and directing the plaintiff to the FOI Reading Room for copies of regulations, manuals, pamphlets and publications. (IRS Exhibit II). In response, plaintiff reformulated her request and asked for the Internal Management Documents ("IMDs") relating to the "substitute for returns" and for the title and position of the officer or employee who prepared the returns. (IRS Exhibit JJ). The IRS answered the reformulated request, enclosing the appropriate form which would enable the plaintiff to obtain copies of the

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> account. However, our computer system requires the presence of a transaction code 150 before a tax adjustment can be made. The only way we can do this is to input a "dummy return" into our system and process it as an actual return. This "dummy return" is also referred to as a "substitute for return". This return contains no information about income or taxes, it only indicates the name, address, SSN, filing status and a date to identify the account the "dummy return" was input for. After this return has processed and a transaction code 150 is present on the account the additional tax assessment is made. These instructions are contained in manuals and we are unaware of any delegation order which may be applicable.

(IRS Exhibit II).

"substitute for returns" and again informing plaintiff that the IRS is "not required to search for the applicable delegation order which authorizes the preparation and filing of returns" or the applicable IMDs. (IRS Exhibit KK).

The plaintiff also sought in her December 26, 1989 request, twenty-one documents which included the numerical and subject indices of the IMDs, in addition to the IMDs sought above. (IRS Exhibit K). The IRS provided the plaintiff with the indices requested in items one and two of her request and informed the plaintiff that the IRS was not required under the FOIA "to make a determination concerning which if any of the Internal Management Documents are applicable to the remaining items of your request," as this would require the IRS to conduct research. The IRS, however, did provide plaintiff with the following information concerning the "substitute for returns":

> The bulk of your request appears to center on the subject "Substitute for return". Due to the numerous inquiries in this regard, this office has been made aware of the following information which may be of value to you although we are not required under the Act to answer questions, provide explanations or interpret correspondence related to enforcement actions.
>
> The amount of the deficiency may be based on a zero tax amount to be shown on a tax return if the taxpayer himself does not file the return. See Section 301.6211-1(a) of the Federal Income Tax Regulations.
>
> An assessment of the determined deficiency must be made in accordance with Section 301.6213. To proceed with an assessment a document indicating zero tax as referenced in Section 301.6211 must be posted to the account for the tax year in question.

The plaintiff argues that the IRS should provide the relevant IMDs even if they are deliberative rather than factual because they represent policies, statements or interpretations of law. Schwartz v. Internal Revenue Service, 511 F.2d 1303, 1305 (D.C. Cir. 1975). The plaintiff contends that the FOIA was enacted specifically to prohibit the proliferation of this kind of "secret law" by a government agency.

The Court finds that the IRS did not act arbitrarily or capriciously in denying the requested information. If the IRS complied in full with the plaintiff's requests of November 3 and December 26, 1989, the IRS would have been required to research which IMDs, rules, regulations and delegations of authority for administering the Internal Revenue Code were applicable to any action the IRS took concerning the plaintiff's "substitute for returns." The IRS is not required to provide the plaintiff with personal services such as legal research. Di Viaio v. Kelley, 571 F.2d 538, 542-43 (10th Cir. 1978); Hudgins v. Internal Revenue Service, 620 F.Supp. 19, 21 (D.C.D.C. 1985). The plaintiff's requests attempt to use the FOIA as a discovery tool. The purpose of the FOIA is to expand a citizen's access to government records, not to answer interrogatories disguised as record requests. Di Viaio, 571 F.2d at 542. The Court, therefore, concludes that the IRS has not improperly withheld any of the requested documents in her fifth and sixth causes of action.

In her tenth cause of action, the plaintiff alleges that the IRS failed to provide her with the documents pertaining to her

record of assessment for the years 1981-88 which conform to the statutory requirements of 26 U.S.C. §6203 and 26 C.F.R. §301.6203-1. The plaintiff requested copies of the record of assessment, the summary record of assessment, and all delegations of assessment authority in her letter dated April 16, 1990 to the IRS Austin Service Center. (IRS Exhibit Q). By letter dated May 1, 1990, the IRS refused to process the plaintiff's request until she provided the IRS with proof of payment of an outstanding FOIA bill. (IRS Exhibit V). After the National Office Disclosure Litigation Division advised the IRS to remove any prior non-payment obligations and to process the plaintiff's request as a result of this litigation, the IRS notified the plaintiff that upon the receipt of $53.00 payment for the estimated cost of reproduction, the IRS would expedite the plaintiff's request. The IRS further informed the plaintiff that

> [a] certificate of Assessments and Payments, Form 4340, may be provided pursuant to IRC 6203. However, it may not be accessed under the provisions of the Freedom of Information Act, if the Form 4340 does not exist at the time of a request. Please be advised, no requirements exists [sic] under the FOIA to create a record. Forms 4340 would only be provided for tax periods 1981 and 1982, where assessments and payments have been made.
>
> Item number 2 of your request exists; however, not in the format you desired. The Forms 23c are signed by an assessment officer, but do not provide your identification or taxable period. Again, as I previously stated, Form 4340 would meet all statutory requirements of Regulation 6203. Copies of the delegation orders are available.

(Plaintiff's Exhibit 25). Upon receipt of the $53.00 payment, the

IRS Austin Service Center enclosed in its letter of January 4, 1991, (IRS Exhibit R), Forms 4340 for tax years 1981 and 1982, Forms 23C for tax year 1981 (assessment dates of March 22 and October 29, 1990) and for tax year 1982 (assessment date of March 22, 1990), delegation orders AUSC 49 and 59 relating to the preparation of Forms 4340 and 23C, and an Individual Master File Transcript (IMF) for tax years 1981-88.

The plaintiff contests Gerard Gallick's declaration that the plaintiff received Forms 23C, summary records of assessment, for tax years 1981 and 1982. The plaintiff also contends that the summary record of assessments and Form 4340 do not meet the statutory requirements of 26 C.F.R. §301.6203-1, and thus, the IRS has not complied with her request.

The Court finds that the IRS Austin Service Center has provided the plaintiff with all the requested documents it created and maintained pertaining to the plaintiff's tax assessments. As the plaintiff has personally attached the subject Forms 23C and Forms 4340 to her response (Plaintiff's Exhibits 27, 28, 29 and 30), the Court can only conclude that plaintiff is contending that she has not been provided with the requested copies because Forms 23C and 4340 do not meet the statutory requirements of §301.6203-1. Section 301.6203-1 requires the following:

> The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessments. . . . If the taxpayer requests a

> copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment which sets forth the name of the taxpayer, the date of the assessment, the character of liability assessed, the taxable period, if applicable, and the amount assessed.

The Court finds that the documents sent to the plaintiff by the IRS Austin Service Center - the Forms 23C, summary records of assessment (Plaintiff's Exhibits 27 and 28), and the Forms 4340, certificates of assessment, (Plaintiff's Exhibits 29 and 30) - together meet the requirements of 26 C.F.R. §301.6203-1, the regulation promulgated pursuant to 26 U.S.C. §6203.[4] U.S. v. Chila, 871 F.2d 1015, 1017 (11th Cir. 1989). The Court also finds that the IRS Austin Service Center provided plaintiff with all the documents it had maintained concerning the assessment of plaintiff's tax for the referenced time period and is not required to create new records in response to the plaintiff's request. Hudgins, 620 F.Supp. at 21 (FOIA does not require an agency "to create documents or opinions in response to an individual's request for information.") The Court further finds that the IRS provided the plaintiff with the pertinent delegation orders for Form 4340 (Plaintiff's Exhibit 32) and for Form 23C (Plaintiff's Exhibit 33). In so finding, the Court concludes as a matter of law that the IRS

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[4] Section 6203 of the Internal Revenue Code, 26 U.S.C. §6203, states in pertinent part that an assessment

> shall be made by recording the liability of taxpayer in the office of the secretary in accordance with the rules or regulations prescribed by the secretary. Upon request of the taxpayer, the secretary shall furnish the taxpayer a copy of the record of the assessment.

has complied with the plaintiff's request of April 16, 1990.[5]

In accordance with the above discussion, the Court grants the IRS' motion for summary judgment on all ten causes of action. The Court concludes that the IRS has either provided the plaintiff with the requested documents or properly refused to conduct legal research in response to plaintiff's FOIA requests. While the plaintiff's sole supporting affidavit may sincerely attest to her belief that she has been subjected to the

> continuing and abusive harassment of being arbitrarily and capriciously labeled as a "tax protestor;" of having my response to the arbitrary and capricious actions of the Internal Revenue Service summarily dismissed as "tax protestor arguments;" and having my Freedom of Information Act Requests arbitrarily and capriciously stonewalled with most documents requested being improperly withheld, (Affidavit of Nancy L. Trennery attached to Plaintiff's Response to Defendant's Reply)

this diatribe does not raise a genuine issue of material fact calling into question the testimony of Gerard Gallick that the IRS has provided the plaintiff with all the requested documents required under the FOIA. Fed.R.Civ.P. 56(e); Weber v. Coney, 642 F.2d 91, 94 (5th Cir. 1981).

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[5]Because the Court finds that the IRS has provided the plaintiff with the required documents, the Court does not address the IRS' alternative argument that the plaintiff failed to exhaust her administrative remedies or plaintiff's defense that the administrative remedies are deemed exhausted pursuant to 5 U.S.C. §552(a)(6)(c).

IT IS SO ORDERED, this 7th day of January, 1992.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANNA M. ROBERTS,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D., Secretary of Health and Human Services,

Defendant.

No. 89-C-522-B

O R D E R

Pursuant to the direction of the United States Court of Appeals for the Tenth Circuit by way of its Order and Judgment dated January 2, 1992, the captioned matter is hereby REMANDED to Louis W. Sullivan, M.D., Secretary of Health and Human Services, for the institution of proper benefits as of the date of the claimant's last application.

DATED this 6th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KEITH ELLIS and LINDA ELLIS, Plaintiffs, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	No. 84-C-1029-B
DENNIS HODNETT and SANDRA W. HODNETT, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	No. 85-C-302-B
THOMAS L. CURRY, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	No. 85-C-303-B

O R D E R

The Court has for decision the Motion of the LTV Corporation and LTV Aerospace and Defense Company for Entry of Order Re-opening the Case and Sustaining Summary Judgment as well as Plaintiffs' Motion to Amend Scheduling Order to allow Plaintiffs to conduct additional discovery. Following a thorough review of the matter the Court has concluded the Plaintiffs' Motion should be OVERRULED and the Defendants' Motion SUSTAINED for the following reasons: A history of this litigation reveals that the Plaintiffs, Keith E. and Linda Ellis and Dennis and Sandra W. Hodnett and Thomas L.

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Curry filed their separate alleged personal injury actions in Cases 84-C-1029-B, 85-C-302-B and 85-C-303-B, respectively, asserting that an army truck (Gama Goat) was defective by reason of its batteries being placed on top of its fuel cells. The Ellis, Hodnett and Curry cases were consolidated for trial under Case No. 84-C-1029-B.

On September 4, 1985, LTV and LTV AD (the "LTV Defendants") and the other Defendants, Consolidated Diesel Electric Corporation and Condec Corporation (the "Condec Defendants"), filed motions for summary judgment. Following the filing of responses and replies thereto, oral arguments were presented to the Court.

On July 17, 1986, the LTV Defendants filed a Petition for Reorganization under Chapter 11 of the Bankruptcy Code in the Southern District of New York. The Chapter 11 filings operated as an automatic stay of the commencement or continuation of actions which were or could have been commenced prior to the filing date pursuant to § 362 of the Bankruptcy Code.

On August 1, 1986 (two weeks after the bankruptcy filing date) this Court entered an order sustaining Defendants' motions for summary judgment and entered judgment in favor of the Defendants, including the LTV Defendants.

On August 19, 1986, Plaintiffs filed a notice of appeal as to the Condec Defendants and an application for extension of time to file a notice of appeal against the LTV Defendants; Plaintiffs expressly reserving their right to perfect their appeal against the LTV Defendants, once the automatic stay was lifted. The Bankruptcy

Court entered an order modifying the automatic stay to permit Plaintiffs to proceed with their appeal as to the judgment in favor of the LTV Defendants. On September 9, 1988, Plaintiffs filed a notice of appeal as to the LTV Defendants. On November 16, 1988, the Court of Appeals heard oral arguments and on November 18, 1988 affirmed the judgment of the trial court as to the Condec Defendants because Plaintiffs had failed to raise a genuine issue of material fact. Plaintiffs filed a petition for writ of certiorari which was denied by the Supreme Court. Ellis, et al v. Consolidated Diesel Electric Corporation, et al, 109 S.Ct. 1745 (1989).

On January 18, 1990, the Court of Appeal dismissed appeal number 88-2424 involving the LTV Defendants on the ground that it had no jurisdiction since the court's judgment of August 1, 1986 in favor of the LTV Defendants, from which Plaintiffs were attempting to appeal, was entered in violation of the automatic stay provisions of § 362 of the Bankruptcy Code.

Plaintiffs and the LTV Defendants entered into a stipulation which would modify the automatic stay to (a) permit the LTV Defendants to request this court to re-open the case and enter an order and judgment on their motion for summary judgment filed on September 4, 1985; (b) permit Plaintiffs to seek leave of this court to engage in additional discovery on the government contract defense issue; and (c) permit an appeal to be taken from this Court's order.

The Court will first address the Plaintiffs' Motion to Amend

Scheduling Order to Allow Plaintiffs to Conduct Additional Discovery. The time for discovery has previously closed in accordance with the Court's scheduling order. Plaintiffs advance no sound basis for the Court to belatedly re-open discovery. The record before the Court establishes that LTV had previously recommended to the Army relocation of the subject batteries from their positions atop the right and left fuel tanks to a place in the engine compartment. The Army rejected this proposal. Even if through further discovery Plaintiffs were to establish that in the late sixties the Army would have moved the batteries had it been advised of a location hazard, the record does not establish superior knowledge by the LTV Defendants on this subject. The record also reveals that out of the many thousands of vehicles produced and placed in service over a fifteen-year period, only the subject vehicle had an accident implicating the battery location.

Plaintiffs' belated request to conduct deposition discovery comes after the trial and appellate courts (as to some Defendants) have concluded that no material issue of fact remains for trial pursuant to Fed.R.Civ.P. 56. Plaintiffs took no discovery depositions during the prior designated numerous months for discovery. The Court agrees with the LTV Defendants that Plaintiffs should not now be permitted to commence a belated fishing expedition. Plaintiffs' Motion to Amend Scheduling Order to Allow Plaintiffs to Conduct Additional Discovery is therefore DENIED.

The Motion of the LTV Corporation and LTV Aerospace and Defense Company for entry of order re-opening the case and sustaining motion for summary judgment is hereby SUSTAINED. The Court's order sustaining Defendants' Motion for Summary Judgment dated and filed August 1, 1986 is hereby re-adopted and incorporated in full herein. The Court will enter a Judgment in keeping with this Order Sustaining the LTV Defendants' Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56.

DATED this 6th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KEITH ELLIS and LINDA ELLIS, Plaintiffs, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	)	No. 84-C-1029-B
DENNIS HODNETT and SANDRA W. HODNETT, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	)	No. 85-C-302-B
THOMAS L. CURRY, v. CONSOLIDATED DIESEL ELECTRIC CORPORATION, et al., Defendants.	)	No. 85-C-303-B

J U D G M E N T

In keeping with the Court's Order Sustaining the Defendants' Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 of this date, Judgment is hereby entered in favor of the Defendants, LTV Corporation and LTV Aerospace and Defense Company, and against the Plaintiffs, Keith E. Ellis and Linda Ellis, Dennis Hodnett and Sandra W. Hodnett and Thomas L. Curry, and said action is hereby dismissed. Costs are hereby assessed against the Plaintiffs if timely applied for pursuant to Local Rule 6, and the parties are to pay their own respective attorneys fees.

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DATED this 6th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAWSHALL L. WHITE, Petitioner,	)	
v.	)	Case No. 91-C-36-B
R. MICHAEL CODY, Respondent.	)	

O R D E R

This matter comes on for consideration of the Objection to Magistrate Judge's Report and Recommendation filed by Petitioner Rawshall L. White (White).

In this habeas corpus proceeding Petitioner White has presented two issues: (1) whether the state trial court violated White's due process rights by misapplying a statute dealing with preemptory jury challenges, and (2) whether the state trial court gave inaccurate jury instructions and whether there was jury misconduct.[1]

The facts giving rise to this matter are as follows: White was convicted in Creek County District Court, Case No. CRF-83-83, of First Degree Murder, and sentenced to life imprisonment. The conviction was affirmed on appeal to the Oklahoma Court of Criminal Appeals.

White filed an application for relief under the Oklahoma Post-

[1] Petitioner characterized Issue (2) as a single issue.

Conviction Procedure Act, 22 O.S. § 1080 *et seq*. The petition was denied by the state trial court on December 16, 1988, and such denial was affirmed by the Court of Criminal Appeals in Case No. PC-89-2. White thereby exhausted his state court remedies.

White filed an earlier federal habeas corpus proceeding[2] on the grounds that: (1) he was allowed only five preemptory jury challenges, instead of the nine provided for by statute; (2) no blacks were included in the jury panel; and, (3) there was ineffective assistance of counsel. This Court, in the earlier case, concluded: (1) that White had failed to raise a federal question entitling him to federal habeas relief on his first ground; (2) that White failed to sustain his burden of establishing that the composition of the jury purposefully excluded members of his race; and (3) that, since White had no constitutional right to a jury with blacks or other ethic groups, his counsel's failure to object thereto was not deficient performance; further, White was not prejudiced by being limited to a smaller number of preemptory challenges and that he made no showing that his counsel's alleged error in failing to object to a jury *sans* blacks and other ethnics prejudiced his ability to receive a fair trial. **Rawshall White v. Stephen Kaiser, Warden**, Case No. 89-C-134-B, United States District Court, Northern District of Oklahoma, Order of Sept. 18, 1989.

As to White's first issue in the matter now before the Court, the Magistrate Judge determined that if an issue has been

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[2] 89-C-134-B, U.S.D.C., N.D. OK.

adjudicated on the merits in a prior petition and the ends of justice would not be served by a redetermination of the same issue, a successive federal habeas corpus petition may be dismissed under Rule 9(b), **Rules Governing Section 2254 Cases**, citing **Smith v. Kemp**, 715 F.2d 1459 (11th Cir. 1983).

In his Objection White claims the "ends of justice" require the instant petition be heard because the earlier decision constituted "plain error". The Court disagrees. The "ends of justice" is a balancing of the need for finality in criminal proceedings against a defendant's interest in receiving justice. **Kuhlmann v. Wilson**, 477 U.S. 436 (1986). In the Court's view an "ends of justice" argument contemplates an intervening change in controlling law or some other rationale for not having raised a crucial point or argument in a prior application. **Sanders v. United States**, 373 U.S. 1 (1963).

The Supreme Court has, by case ruling, directed federal courts to entertain a successive habeas petition only when the petitioner supplements his constitutional claim with a colorable showing of factual innocence. **Kuhlmann**, *supra*. This White does not do. No colorable showing of factual innocence having been made, White's petition, on this issue, is subject to dismissal.

White contends it was "plain error" for this Court to rely upon **Ross v. Oklahoma**, 487 U.S. 81 (1988), in its earlier Order rejecting White's claim that he did not receive due process. The Court again holds, as in the earlier Order, that White has failed to raise a federal question entitling him to federal habeas relief.

A federal habeas corpus court is limited to violations of federal constitutional and statutory standards and questions of state law are not cognizable. **Engle v. Isaac**, 456 U.S. 107 (1982). White did not demonstrate in the earlier habeas corpus matter how the absence of a full panoply of preemptory challenges deprived him of a fair trial. The Court determines its earlier reliance upon **Ross** was appropriate.

The Court concludes its earlier Order, in 89-C-134-B, adequately addresses this issue; that no appeal therefrom was taken by White; that the Report and Recommendation of the Magistrate Judge, as to this issue, was essentially based upon such earlier Order. The Court further concludes White's Objection to the Report and Recommendation, as to this issue, should be and the same is hereby DENIED.

As to White's second issue, a "new" issue, White's current argument is that he "was forced to rely on the advice of an inmate law clerk" in his earlier habeas petition and that White has since "learned that not all law clerks are created equal", i.e. he did not know to bring up this issue. Rule 9(b) and 28 U.S.C. §2244 mandate that courts dismiss subsequent petitions when no reasonable explanation is offered as to why the "new" claim was not raised in the earlier application. **Coleman v. Saffle**, 869 F.2d 1377 (10th Cir.1989). A petitioner must show that he or his counsel, in the earlier proceeding, did not abandon or inexcusably neglect the new claim and that the claim was not deliberately withheld. **Coleman**, *supra*. Failure to make such a showing constitutes an "abuse of the

writ". Once an abuse of writ assertion is raised "with clarity and particularity", **Coleman**, *supra*, the burden shifts to a petitioner to show he has not abused the writ procedure. **Coleman**, *supra*.

The Court concludes White has offered no satisfactory explanation why he failed to raise the new claim in his earlier habeas corpus proceeding, thus failing to meet his burden. Habeas corpus proceedings are subject to dismissal when a petitioner has failed to demonstrate he has not abused the writ. **Antone v. Dugger**, 465 U.S. 200 (1984).

The Court concludes White's Objection to the Magistrate Judge's Report and Recommendation as to the second issue should be and the same is hereby DENIED.

The Court denies White's Objections to the Magistrate Judge's Report and Recommendation. The Court adopts and affirms the Report and Recommendation and Petitioner's claims should be and the same are hereby DISMISSED.

IT IS SO ORDERED this 6th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CIGNA PROPERTY AND CASUALTY INSURANCE COMPANY (formerly Aetna Insurance Company), a foreign corporation, and INSURANCE COMPANY OF NORTH AMERICA, a foreign corporation,

Plaintiffs,

v.

MAUREEN BROWN; ROY J. HANNAFORD, II and EILEEN HANNAFORD, husband and wife, PATSY J. HANNAFORD; ROY J. HANNAFORD COMPANY, INC., an Oklahoma corporation; and RUCKNER CONSTRUCTION CO. OF TEXAS, INC., a Texas corporation,

Defendants.

No. 91 C-063 E

RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE

The parties by and through their respective counsel, pursuant to Rule 41(a)(1) F.R.Civ.P. stipulate to the dismissal of the above styled and numbered cause of action without prejudice.

One of the Attorneys for Plaintiffs

One of the Attorneys for Defendant, Maureen Brown

One of the Attorneys for Defendant, Roy J. Hannaford, II, and Eileen Hannaford, husband and wife

(signatures continued)

One of the Attorneys for Defendant,
Patsy J. Hannaford

One of the Attorneys for Defendant,
Roy J. Hannaford Company, Inc., an
Oklahoma corporation

One of the Attorneys for Rucker
Construction Co. of Texas, Inc., a
Texas Corporation

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 6 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. HOWARD A. BOYD a/k/a HOWARD BOYD; PHYLLIS A. BOYD a/k/a PHYLLIS BOYD; GILCREASE HILLS HOMEOWNERS ASSOCIATION; COUNTY TREASURER, Osage County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, Defendants.	CIVIL ACTION NO. 90-C-489-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 3 day of Jan, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Everett R. Bennett, Jr., P.O. Box 799, Tulsa, Oklahoma 74101, Attorney for Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, and all other counsel and parties of record.

The Court further finds that the amount of the Amended Judgment rendered on March 13, 1991, in favor of the Plaintiff United States of America, and against the Defendant, Phyllis A.

Boyd a/k/a Phyllis Boyd, with interest and costs to date of sale is $81,894.43.

The Court further finds that the appraised value of the real property at the time of sale was $43,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Amended Judgment of this Court entered March 13, 1991, for the sum of $38,618.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on December 6, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, as follows:

Principal Balance as of 3-13-91	$61,784.09
Interest	18,235.28
Late Charges to Date of Judgment	143.68
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	440.90
Abstracting	423.25
Publication Fees of Notice of Sale	142.23
Court Appraisers' Fees	225.00
TOTAL	$81,894.43
Less Credit of Appraised Value -	43,000.00
DEFICIENCY	$38,894.43

plus interest on said deficiency judgment at the legal rate of 4.41 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Phyllis A. Boyd a/k/a Phyllis Boyd, a deficiency judgment in the amount of $38,894.43, plus interest at the legal rate of 4.41 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/esr

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,	)	
Plaintiff,	)	
vs.	)	Case No. 90-C-908-E
J. RAYMOND WRIGHT, a/k/a J.R. WRIGHT, a/k/a J.R. WRIGHT, d/b/a WRIGHT ANGUS VALLEY RANCH; THE UNKNOWN HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES, TRUSTEES, AND ASSIGNS OF BESSIE J. WRIGHT, deceased; E. JANE BELLAMY; MARTHA C. KEYS; ANTHONY D. KEYS; BOARD OF COUNTY COMMISSIONERS OF CREEK COUNTY, State of Oklahoma; and DEESA HAMNONTREE, Treasurer of Creek County, State of Oklahoma,	)	
Defendants.	)	

JUDGMENT

This action came on for consideration by the Court on the Motion for Summary Judgment of the Plaintiff, Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC") as against Defendants J. Raymond Wright, a/k/a J. R. Wright, a/k/a J. R. Wright d/b/a Wright Angus Valley Ranch and against the Unknown Heirs, Executors, Administrators, Devisees, Trustees, and Assigns of Bessie J. Wright, deceased, in this action on a promissory note and for foreclosure of all interests in the securing real property.

The issues having been duly tried and a decision duly rendered by Order of December 12, 1991, granting Plaintiff's Motion for Summary Judgment,

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment in personam and in rem be hereby entered in favor of Plaintiff and against Defendant J. Raymond Wright, a/k/a J. R. Wright d/b/a Wright Angus Valley Ranch in the amount of $280,000.00, plus interest accrued at the default rate through September 11, 1990, in the sum of $74,061.22, with interest accruing from and after September 11, 1990, until date of judgment at the rate of $111.24 per diem; plus costs and expenses, any advanced taxes, and a reasonable attorney fee, the exact amount of which to be determined by the Court, upon application to be submitted within 20 days of the filing date of this Judgment; with post-judgment interest on the above sums at the rate of 4.41 per annum until paid, for which amounts the Mortgage is a first, prior, and superior lien upon the subject property and premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment in rem be hereby entered as against all named Defendants herein, as FDIC's mortgage interest in and to the real property at issue is a first, prior, valid and enforceable lien upon that property securing FDIC's lien and judgment. Any and all right, title, and/or interest of the Defendants named herein in and to the property is hereby foreclosed as junior, inferior and subordinate to the lien and interests of FDIC, except as to any unpaid real estate ad valorem taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Unknown Heirs, Executors, Administrators, Devisees, Trustees, and Assigns of Bessie J. Wright, having been duly and properly served by publication, pursuant to this Court's Order of March 8, 1991, and having filed no answer or other pleading, are therefore in

default. The Court has inquired as to the sufficiency of Plaintiff's search to determine the names and whereabouts of the defendants who were served herein by publication, and based on the evidence adduced, the Court finds that Plaintiff has exercised due diligence and has conducted a meaningful search of all reasonably available sources at hand. The Court approves the publication service given herein as meeting both statutory requirements and the minimum standards of state and federal due process.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of Defendant J. Raymond Wright, a/k/a J. R. Wright d/b/a Wright Angus Valley Ranch to satisfy the lien described above, and upon submission by FDIC to the Clerk of this Court of a Special Writ of Execution and Order of Sale to be issued by the Clerk, the Sheriff of Creek County, State of Oklahoma, shall levy upon the property, by advertising and selling, as upon execution, the property, with appraisement, with the proceeds therefrom being applied first to expenses of sale, and next to reduction of the indebtedness due and owing to FDIC by virtue of the judgment and lien herein, with the balance, if any remaining, to be paid into Court subject to further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants herein and all persons claiming under them from and after the filing of this action be thereupon barred, restrained, and enjoined from having or asserting any right, title, or interest or other right of redemption in and to the Property and that a Writ of Assistance shall issue upon request of the purchaser to the Sheriff, who shall place the purchaser in full and complete possession and enjoyment of the Property.

SO ENTERED this 2d day of January, 1992.

James O. Ellison, Judge
United States District Court
for the Northern District of
Oklahoma

APPROVED: Journal Entry of Judgment, Case No. 90-C-908-E, In the United States District Court for the Northern District of Oklahoma

Leslie Zieren OBA No. 9999
BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza, 100 W. 5th St.
Tulsa, Oklahoma 74103

COUNSEL FOR PLAINTIFF

APPROVED: Journal Entry of Judgment, Case No. 90-C-908-E, In the United States District Court for the Northern District of Oklahoma

J. Raymond Wright, OBA #11448
c/o James V. Murray
P. O. Box 2224
Stillwater, OK 74076

COUNSEL FOR J. R. WRIGHT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation, Plaintiff,	)	
vs.	)	No. 90-C-146-B
DYNASTY AUTO RENTAL AND LEASING, INC., a Massachusetts corporation, RICHARD E. THIBAULT, KENNETH DEMARCO and MICHAEL SCARDUZIO, individuals, Defendants.	)	

SUPPLEMENTAL ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT

The Court in its Order of May 29, 1991, entered a partial summary judgment for Plaintiff.[1] Upon further review of the file and the documentation presented, the Court hereby sustains Plaintiff's Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56.

The Defendants have failed to present timely documentation in response to Plaintiff's discovery requests so Plaintiff's documentation remains unrebutted. Material facts are not in dispute concerning the amount due by Defendants, Dynasty as principal, and Thibault, DeMarco and Scarduzio as guarantors under the license agreement and lease agreement. (PX-A, ¶ 8.6 and the Master Lease Agreement, PX-E, and the Affidavit of Thomas R. Bonner dated January 9, 1991). Said sums are as follows:

[1]Pages 1 through 6 and to the middle of page 7 of said Order are hereby adopted and incorporated herein.

LICENSE AGREEMENT

Administrative Fees	$ 59,130.08
Airline Booking Fees	335.00
Travel Agent Commission	1,081.76
Frequent Flyer	302.00
Reservation Charges	2,116.50
Supplies	686.28
Postage	24.15
Federal Express Charges	25.50
Yellow Pages Charges	490.01
Insurance Charges	693.50
Delinquent Parking Tickets	522.00
Miscellaneous	331.74
TOTAL (Interest at the rate of 6% per annum pursuant to Okla.Stat. tit. 15, § 266 from November 16, 1989)[2]	$ 65,738.52

LEASE AGREEMENT

Fleet Program Lease Charges	$ 87,042.60
Transportation to Auction Charges	4,972.53
Auction Return and Recondition Charges	6,999.47
Damage to Auto Charges	4,852.48
Excise Taxes	37,250.33
Late Charges	1,541.95
Program Reject	7,260.00
TOTAL (Interest at the rate of 6% per annum pursuant to Okla.Stat. tit. 15, § 266 from November 16, 1989)	$149,919.36

All Defendant parties, including the Defendant Thibault, are liable to pay arrearage of the promissory note of August 1, 1988 (attached to Affidavit of Thomas M. Bonner of January 9, 1991) in the amount of $16,985.00 in principal due and $3200.81 in interest to December 31, 1990, and per diem interest at $5.12 per day after December 31, 1990, pursuant to the rate set forth in said

[2]The amount specified in the written agreements as the highest rate permitted by law is too ill-defined for there to be mutuality of agreement. The Oklahoma legal rate of 6% per annum in accordance with Okla.Stat. tit. 15, § 266 is appropriate herein as a matter of law.

promissory note. The Defendant, Thibault, is personally liable for said obligation of Dynasty pursuant to his personal guaranty (License Agreement, Addendum 1, PX-A and ¶ 3.20 of PX-A).

Regarding Defendants' claim of set-off or credit, they have failed to produce any documentation supporting such a claim or creating a material fact joining issue with the Affidavit of Vice-President of Thrifty, Thomas M. Bonner. Further, regarding Defendants' claim that they were denied the right to sell to a third party, Defendants have presented no documentation, either before or after the termination, evidencing compliance with the licensee's obligation for such a transfer according to ¶ 9.2.2.1 of PX-A, pp. 15-16, the license agreement.

The Court will prepare a separate Judgment for filing contemporaneous with this Order.

DATED this 29th day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation, Plaintiff,	)	
vs.	)	No. 90-C-146-B
DYNASTY AUTO RENTAL AND LEASING, INC., a Massachusetts corporation, RICHARD E. THIBAULT, KENNETH DEMARCO and MICHAEL SCARDUZIO, individuals, Defendants.	)	

J U D G M E N T

In accordance with the Supplemental Order Sustaining Plaintiff's Motion for Summary Judgment filed this date, Judgment is hereby entered in favor of Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendants, Dynasty Auto Rental and Leasing, Inc., Richard E. Thibault, Kenneth DeMarco and Michael Scarduzio in the amount of Two Hundred Fifteen Thousand Six Hundred Fifty-Seven and 51/00 Dollars ($215,657.88), with interest thereon at the rate of 6% per annum from November 16, 1989; further, Plaintiff, Thrifty Rent-A-Car is granted judgment against the Defendants, Dynasty Auto Rental and Leasing, Inc., Richard E. Thibault, Kenneth DeMarco and Michael Scarduzio, on the promissory note of August 1, 1988 in the sum of Sixteen Thousand Nine Hundred Eighty-Five Dollars ($16,985.00) in principal, and Three Thousand Two Hundred and 81/100 Dollars ($3,200.81) in interest to December 31, 1990, and per diem interest at $5.12 per day after December 31, 1990; and costs are assessed against the Defendants if timely applied for

pursuant to Local Rule 6. Any claim for attorneys fees should also comply with Local Rule 6.

DATED this 3rd day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
REECE EZELL, JR. and MARY G. EZELL, a/k/a MARY GAY EZELL, husband and wife, individually and as partners of Reece's Barbeque; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; and GEORGES OF OKLAHOMA, INC.,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 90-C-571-B

ORDER CONFIRMING SALE

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed December 12, 1991, in which the Magistrate Judge recommended that the Motion to Confirm Sale be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and is affirmed.

It is therefore **ORDERED** that the Motion to Confirm Sale is granted.

Dated this 31st day of January, 1992.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ALVA DALE TILLEY, ET AL
Plaintiff(s),

vs. No. 91-C-117-C

TIME INSURANCE COMPANY
Defendant(s).

JUDGMENT DISMISSING ACTION BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 3rd day of January, 1992.

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARILYN DICKERSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CIVIL ACTION NO. 91-C-435-E**
	)	
LOUIS W. SULLIVAN. M.D.. Secretary of Health and Human Services,	)	
	)	
Defendant.	)	

ORDER

Upon the motion of Louis W. Sullivan, Secretary of the Department of Health and Human Services, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that the above-styled case be remanded to the Defendant for further administrative action.

Dated this 2nd day of Jan., 199 .

UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

PETER BERNHARDT, OBA# 741
Assistant United States Attorney
3900 US Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA Plaintiff, vs. MICHAEL R. STEFFEN, Defendant.	)	CIVIL ACTION NO. 91-C-900-E

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the principal sum of $95,369.67, accrued interest in the amount of $244.96 as of September 30, 1991, plus interest thereafter at the rate of $24.49 per day until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay

the amount of indebtedness in full and the further representation of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 28th day of December, 1991, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of $600.00, and a like sum on or before the same day of each following month until July, 1992 at which time the payment each month will be $1,000.00. Beginning January, 1993, the payment each month will be $2,000.00. Beginning January, 1994, the payment each month will be $3,000.00 until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

4. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment

without notice to the defendant.

5. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Michael R. Steffen, in the principal amount of $95,369.67, accrued interest in the amount of $244.96 as of September 30, 1991, interest at the rate of $24.49 per day from September 30, 1991, until judgment, plus interest thereafter at the current legal rate of 4.41 percent per annum until paid, plus the costs of this action.

S/ JAMES O. ELLISON

JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney

MICHAEL R. STEFFEN,
Debtor

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

CONDRIN OIL CORP., GLENMONT INVESTMENTS, INC. GLENMONT-EMERALD, INC., and JON R. CONDRIN

Defendants.

CIVIL ACTION NO.

91 C 967 E

ORDER OF PERMANENT INJUNCTION

This matter came before this Court on the 2nd day of Jan, 1992, upon the joint motion of plaintiff, SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), and defendants, CONDRIN OIL CORP. ("COC"), GLENMONT INVESTMENTS, INC. ("GLENMONT"), GLENMONT-EMERALD, INC., ("EMERALD"), and JON R. CONDRIN ("CONDRIN") (collectively, where appropriate, "Defendants"), for issuance of an order providing the relief set out herein. Defendants COC, GLENMONT, EMERALD and CONDRIN have provided this Court with a Stipulation and Consent of Defendants ("Stipulation") wherein they: 1) acknowledge and admit the in personam jurisdiction of this Court over each of them, and the subject matter jurisdiction of this Court over the cause of action claimed by the COMMISSION herein; 2) waive entry of findings of fact and conclusions of law pursuant to rule 52, Fed. Rules Civ. Proc., 28 U.S.C., with respect to the entry of this Order of Permanent Injunction ("Order"); 3) consent,

for purposes of this action only, without admitting or denying any of the allegations of the COMMISSION's Complaint for Civil Injunction and Other Equitable Relief ("Complaint"), except as set forth herein, to the entry of this Order. The stipulations, acknowledgments and agreements set out in the Stipulation are all incorporated by reference and made a part hereof.

It appears this Court has in personam jurisdiction over Defendants COC, GLENMONT, EMERALD and CONDRIN, and subject matter jurisdiction over the cause of action claimed by the COMMISSION; it appears that no further notice or hearing is required prior to entry of this Order and there is no just reason for delay; and it appears the Court has been fully advised of the premises for entry of this Order.

IT IS THEREFORE ORDERED:

I.

Defendants COC, GLENMONT, EMERALD and CONDRIN, their respective officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, in connection with the purchase and sale of securities in the form of fractional undivided interests in oil, gas, or mineral rights, limited partnership interests, or any other security, directly or indirectly, from making use of any means or instrumentality of

interstate commerce or of the mails, or of any facility of any national securities exchange:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning:

(1) the assets of the issuer of the securities or the promoter of a drilling venture, specifically false, misleading or incomplete statements that a promoter has obtained oil and gas leases as a means to produce income from oil and gas production;

(2) the likelihood or degree of success or failure of any drilling venture, specifically including false, misleading or incomplete statements regarding: well data, production information and geological reports; minimum returns and payout periods; or assurances of profitability;

(3) the use of proceeds from any securities offering, specifically false, misleading or incomplete statements regarding the source of funds paid out to investors;

(4) the financial status and condition of the issuer of securities or the promoter of a drilling venture, specifically false, misleading or incomplete

statements that the promoter has the financial means to satisfy its obligations to service or material suppliers, third-party vendors, or investors; and

(5) other false, misleading or incomplete statements of similar purport of object; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

II.

Defendants COC, GLENMONT, EMERALD and CONDRIN, their respective officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained, in the offer or sale of securities in the form of fractional undivided interests in oil, gas, or mineral rights, limited partnership interests, or any other security, from making use of any means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or omit to state a material fact

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning, but not limited to, those matters set out in part I(b) of this Order; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 17(a) of the Securities Act of 1933, as amended ("Securities Act") [15 U.S.C. § 77q(a)].

III.

Defendants COC, GLENMONT, EMERALD and CONDRIN, their respective officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, by the means and instruments of transportation or communication in interstate commerce or of the mails:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell any securities in the form of fractional undivided interests in oil, gas, or mineral rights, limited partnership interests, or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the COMMISSION as to such securities;

(b) carrying securities in the form of fractional undivided interests in oil, gas, or mineral rights, limited partnership interests, or any other security, or causing them to be carried through the mails or in interstate commerce by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the COMMISSION as to such securities; or

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, securities in the form of fractional undivided interests in oil, gas, or mineral rights, limited partnership interests, or any other security, unless a registration statement has been filed with the COMMISSION as to such securities, or while a registration statement filed with the COMMISSION as to such securities is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h];

in violation of Sections 5(a) and 5(c) of the Securities Act [15 §§ U.S.C. 77e(a) and 77e(c)]; provided, however, that nothing in this part III shall apply to any securities or transactions in securities which are exempt from the provisions of Sections 5 of the Securities Act [15 U.S.C. § 77e].

IV.

Defendant CONDRIN, his respective agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, engaging in the business of effecting transactions in securities, in the form of fractional, undivided interests in oil, gas or mineral rights, limited partnership interests, or any other security, for his own account or for the account of others, while making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than an exempted security, commercial paper, bankers' acceptances or commercial bills), unless Defendant CONDRIN is registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. 780(b)], or is otherwise exempt from registration, pursuant to Section 15(a)(1) of the Exchange Act [15 U.S.C. 78o(a)(1)].

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action in order to hear such other matters that are properly before this Court, or would properly come before this Court, to implement and carry out the terms of all orders and decrees that may be entered herein, and to grant such further relief as may be necessary and appropriate.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order pursuant to Rule 54 of the Federal Rules of Civil Procedure.

SIGNED this 2nd day of Jan, 1992.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GARY HENDERSON,

Plaintiff,

vs.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, JOHNSON CLAIM SERVICE, INC., and ED BALCERAK,

Defendants.

Case No. 91-C-706-C

FILED

JAN 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE

The Joint Application and Stipulation for Dismissal With Prejudice of the above styled and entitled action comes on for consideration and the Court, being fully advised, finds that said Joint Application should be and is hereby approved.

Therefore, the above styled and entitled action, and each claim and cause of action contained therein, is hereby dismissed with prejudice and each party shall bear their own cost incurred herein.

SO ORDERED this 3 day of ~~November~~ December, 1991.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PIONEER-STANDARD ELECTRONICS, INC. Plaintiff, vs. AMERICAN BINARY TECHNOLOGIES, INC. Defendant and Third Party Plaintiff, vs. DIGITAL EQUIPMENT CORPORATION, Third Party Defendant.	)	Case No. 91-C-365-B

JUDGMENT

This matter comes on before the Court on the parties Application for Entry of Agreed Judgment. The Court, having reviewed the pleadings and being fully advised makes the following findings:

1. On June 15, 1990, defendant, ABT, for good and valuable consideration, entered into a debt restructuring agreement with plaintiff, Pioneer.

2. On June 15, 1990, defendant, ABT, as maker, for a good and valuable consideration, made, executed and delivered to Pioneer in Cleveland, Ohio, a promissory note.

3. The promissory note is in default.

4. Three payments of $15,000.00 were made on June 30, 1990, July 25, 1990, and August 25, 1990. These payments resulted in a principal reduction of $39,560.91, leaving an unpaid principal balance of $140,019.09, as of August 25, 1990.

5. Interest has accrued on the unpaid principal balance of $140,019.09, at the rate of eighteen percent (18%) per annum, pursuant to the terms of the promissory note, from August 25, 1990, to December 20, 1991, in the amount of $33,248.33.

6. The per diem interest, pursuant to the terms of the promissory note, at the rate of eighteen percent (18%) per annum on the unpaid principal balance is $69.05.

7. Pioneer is entitled to recover it's reasonable attorney's fees under 12 O.S. § 936 (1981).

IT IS THEREFORE ORDERED that plaintiff, Pioneer-Standard Electronics, Inc., have and recover judgment of and from defendant, American Binary Technologies, Inc., for the principal sum of $140,019.09, together with interest at the rate of eighteen percent (18%) per annum, from August 25, 1990, to December 20, 1991, in the amount of $33,248.33, for the total sum of $173,267.42, together with per diem interest continuing to accrue in the amount of $69.05 per day, until paid, for all of which let execution issue.

IT IS FURTHER ORDERED that plaintiff, Pioneer-Standard Electronics, Inc., is granted its attorney's fees and costs upon proper application.

DATED this 3rd day of January, 1992.

Thomas R. Brett, United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

WHEATLEY GASO, INC.,

Plaintiff,

vs.

ARROW VALVE CO., INC.,

Defendant.

No. 90-C-561-C

PERMANENT INJUNCTION

Based on the evidence presented to the Court at a hearing held in this matter on September 10, 1991 and pursuant to the Court's Order dated October 30, 1991 the Court hereby finds that a permanent injunction should be issued.

IT IS ORDERED, ADJUDGED and DECREED that defendant Arrow Valve Co., Inc., is directed and is hereby permanently enjoined from advertising presently and in the future that its 1" valves have heretofore been fire tested in accordance with the API RP-6F fire test.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendant Arrow Valve Co., Inc. is directed to notify its distributors, officers, agents, employees and to any other individual known to have previously been furnished or presently in the possession of Arrow Valve's sales catalog printed on September 6, 1985 containing the offending advertising, advising that the assertions contained

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therein regarding the fire testing of 1" valves was false and is accordingly retracted.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendant Arrow Valve Co., Inc. is directed to file within 30 days from the date of this Order a certification advising that the directives of the Court as contained herein have been satisfied.

IT IS SO ORDERED this 2 day of January, 1992.

H. DALE COOK
United States District Judge

ordered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MONSI LGGRKE,

Plaintiff,

vs.

LOIS BENKULA, et al.,

Defendants.

Case No. 89-C-417-C

DISMISSAL WITHOUT PREJUDICE

Pursuant to Fed. R. Civ. P. 41, defendant American College of Careers, Ltd. d/b/a Dickinson Business School hereby dismisses its counterclaim against plaintiff, Monsi Lggrke, without prejudice to the refiling of the same.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By _____

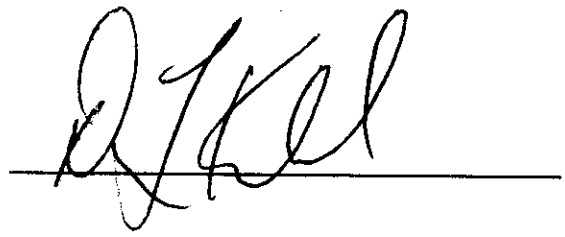
Donald L. Kahl
Fred M. Buxton
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of January, 1992, a true and correct copy of the above and foregoing Dismissal Without Prejudice was mailed, postage prepaid, to the following:

Frederic Dorwart
HOLLIMAN, LANGHOLZ, RUNNELS
& DORWART, P.C.
Suite 700 Holarud Building
10 East Third Street
Tulsa, OK 74103



GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENGLAND, JOHNNIE, et. al., Plaintiff(s), vs. ANCHOR PACKING COMPANY, et al., Defendants.	)	No. 88-C-709-C

FILED

JAN 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BERRY, JOE MONROE, et al,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-784-C

FILED

JAN 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EAST, ROY, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-941-C

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook
U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its capacity as owner of certain assets of the now insolvent Utica National Bank and Trust Company, Tulsa, Oklahoma,

Plaintiff,

vs.

OKLAHOMA APNEA SERVICES, INC., et al.,

Defendants.

Case No. 91-C-480-E

ORDER APPROVING JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

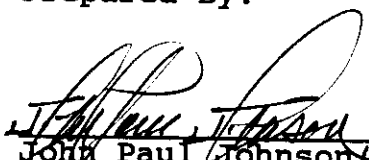
The Court, having reviewed the Joint Stipulation of Dismissal With Prejudice filed in the above-entitled cause, finds that the said Stipulation should be approved.

IT IS, THEREFORE, ORDERED that the above-entitled and number cause be and hereby is dismissed with prejudice.

Dated this 24th day of January, 1992.

JUDGE OF THE DISTRICT COURT

Prepared By:



John Paul Johnson, ~~OBA~~ 4700
Federal Deposit Insurance Corporation
P. O. Box 26208
Oklahoma City, OK 73126
Telephone: (405) 841-4341

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WESTERVELT, JAMES, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1008-C

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WALL, RESSIE MAE,

Plaintiff,

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-1410-C

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

(Signed) H. Dale Cook

U.S. DISTRICT JUDGE

GOAL-P6/GOA-MDO1
GOA-MD-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BOBBY LEE BAUER, Plaintiff and
HELEN L. BAUER, Plaintiff's spouse,

Plaintiffs,

vs.

GEORGIA TALC CORPORATION, et al.,

Defendants.

No. 88-C-927-C

ORDER OF DISMISSAL

Upon Plaintiff's motion, this action is hereby dismissed.

(Signed) H. Dale Cook

U.S. DISTRICT JUDGE

GOAL-B5/BAU-MDO1

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HULSEY, BOBBIE, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-848-C

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JONES, BUDDY, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-790-C

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook

U.S. DISTRICT COURT

GOAL-P6/GOA-RO1
-R-V1-2

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BOWEN, SANFORD, et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-772-C

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook
U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

GLH/ta
12/11/91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GREEN, HOWARD R., et al.,

Plaintiff(s),

vs.

ANCHOR PACKING COMPANY, et al.,

Defendants.

No. 88-C-706-C

ORDER OF DISMISSAL

Upon Plaintiffs' motion, this action is hereby dismissed with the following reservations:

1. This dismissal in no way affects Plaintiffs' rights to pursue claims against Defendants currently seeking the protection of bankruptcy courts.

2. This dismissal is subject to prior dismissals regarding Plaintiffs' right to their potential claims for cancer and fear of cancer.

(Signed) H. Dale Cook

U.S. DISTRICT COURT

GOAL-P6/GOA-R01
-R-V1-2

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

STATE FEDERAL SAVINGS ASSOCIATION, by and through its Conservator, Resolution Trust Corporation, as successor-in-interest to certain assets of State Federal Savings and Loan Association,

Plaintiff,

vs.

TEAM DEVELOPMENT CORPORATION; JOHN F. CANTRELL, County Treasurer, Tulsa County; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; and HARRIET C. SHERRILL,

Defendants.

Case No. 90-C 810-B

DEFICIENCY JUDGMENT

Now, on this 2nd day of Jan., 1992, this matter comes on to be heard as to the Motion for Leave to Enter Deficiency Judgment filed herein by Plaintiff, State Federal Savings Association, by and through it Receiver, Resolution Trust Corporation ("State Federal"), as successor-in interest to certain assets of State Federal Savings and Loan Association, against the Defendant Team Development Corporation. State Federal appeared by and through its attorney Burk E. Bishop of Boesche, McDermott & Eskridge and the Defendant Team Development Corporation appeared by and through its attorney Charles A. Gibbs III. The Court reviewed the court file as to the proceedings herein and the statements and arguments of counsel, and finds as follows:

1. State Federal's Motion for Leave to Enter Deficiency Judgment against the Defendant Team Development Corporation was properly filed pursuant to 12 O.S. §686 on August 12, 1991, said

estate by the Sheriff of Tulsa County in this proceeding on May 21, 1991.

2. The Court further finds that on May 21, 1991, the property foreclosed in the instant action (the "Property") was sold at Sheriff's Sale to State Federal for the sum of $33,500.00, the property having previously been appraised under the direction of the Sheriff of Tulsa County, Oklahoma, for the sum of $50,000.00. Defendant Team Development Corporation's appraisal indicates and Plaintiff stipulates that the fair and reasonable market value of the property as of the date of Sheriff's sale was $77,500.00 is less than the amount of the judgment of State Federal as of the date of sale. As a result, the judgment of State Federal was not satisfied in full by the sale of the Property, and thus there is a deficiency due and owing on State Federal's judgment against the Defendant Team Development Corporation in the total amount of $83,020.55, costs, plus expenses accrued after the date of sale, plus interest thereon at the statutory rate 11.71% per annum from the date of sale until paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that State Federal be granted a judgment in personam against the Defendant Team Development Corporation for the sum of $83,020.55, with interest thereon at the statutory rate of 11.71% per annum from May 21, 1991, until paid, plus costs accrued after date of sale, together with all costs, accrued and accruing in this action, and let execution issue.

S/ THOMAS R.

JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVED FOR ENTRY:

Burk E. Bishop, OBA #00813
BOESCHE, McDERMOTT & ESKRIDGE
100 West 5th Street, Ste. 800
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF,
STATE FEDERAL SAVINGS ASSOCIATION,
by and through its Receiver,
Resolution Trust Corporation

Charles A. Gibbs III, OBA #3341
427 South Boston, Suite 1702
Tulsa, Oklahoma 74103
(918) 587-6640

ATTORNEY FOR DEFENDANT,
TEAM DEVELOPMENT CORPORATION

P:\ws5\doc
STATEDJ.PLD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY C. GRIFFIN,
an individual plaintiff,

Plaintiff,

vs.

DILLON FAMILY & YOUTH SERVICES, d/b/a SHADOW MOUNTAIN INSTITUTE, a corporation,

Defendant.

No. 90-C-672-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed this date, Judgment is hereby entered in favor of Dillon Family & Youth Services, d/b/a Shadow Mountain Institute, a corporation, and against the Plaintiff, Mary C. Griffin, and the Plaintiff's action is hereby dismissed. The Defendant as the prevailing party is hereby awarded costs of the action, if timely applied for pursuant to Local Rule 6, and the parties are to pay their own respective attorneys fees.

DATED this 2nd day of January, 1992.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LESTER L. HERRON; NANCY HERRON; SERVICE COLLECTION ASSOCIATION, INC.; COUNTY TREASURER, Mayes County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Mayes County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 91-C-405-C

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day of Jan, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney; the Defendant, Service Collection Association, Inc., appears by Mark G. Robb, Esq.; the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, appear by Bill Castor, Assistant District Attorney, Mayes County, Oklahoma; and the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Lester L. Herron a/k/a Lester Leon Herron, acknowledged receipt of Summons and Complaint on July 22, 1991 and was served with Summons and Complaint on July 30, 1991; that the Defendant, Nancy Herron, was served with Summons and Complaint on July 30, 1991; that the Defendant, Service Collection Association, Inc., acknowledged receipt of

Summons and Complaint on July 1, 1991; and that Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on June 13, 1991.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer and Cross-Petition on September 19, 1991; that the Defendant, Service Collection Association, Inc., filed its Answer on July 11, 1991; and that the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

> The South 120 Feet of the North 525 Feet of the East 176 Feet of the SE1/4 of the NE1/4 of the NE1/4 of Section 26, Township 20 North, Range 18 East of the Indian Base and Meridian.

The Court further finds that on October 21, 1983, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, their mortgage note in the amount of $42,000.00, payable in monthly installments, with interest thereon at the rate of 10.75 percent (10.75%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated October 21, 1983, covering the above-described property. Said mortgage was recorded on October 21, 1983, in Book 618, Page 20, in the records of Mayes County, Oklahoma.

The Court further finds that on October 21, 1983, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on September 24, 1984, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on October 21, 1985, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on April 17, 1986, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 20, 1986, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 19, 1988, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement purusant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on October 21, 1985, the Defendants, Lester L. Herron and Nancy Herron, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement purusant to which the entire debt due on that date was made principal.

The Court further finds that the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, made default under the terms of the aforesaid note, mortgage, interest credit

agreements, and reamortization and/or deferral agreement by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, are indebted to the Plaintiff in the principal sum of $40,706.59, plus accrued interest in the amount of $5,007.16 as of August 30, 1990, plus interest accruing thereafter at the rate of 10.75 percent per annum or $11.9890 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of $12,374.62, plus interest on that sum at the legal rate from judgment until paid, plus the costs of this action in the amount of $42.64 ($20.00 docket fees, $14.64 fees for service of Summons and Complaint, $8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, County Treasurer, Mayes County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of $58.48 which became a lien on the property as of July 1, 1986; the amount of $25.78 which became a lien on the property as of July 1, 1989; the amount of $23.79 which became a lien on the property as of July 1, 1990; and the amount of $21.72 which became a lien on the property as of July 1, 1991. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, are in default

and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, Board of County Commissioners, Mayes County, Oklahoma, has no right, title or interest in the subject real property.

The Court further finds that the Defendant, Service Collection Association, Inc., has a lien on the property which is the subject matter of this action by virtue of a Judgment in the District Court In and For Tulsa County, State of Oklahoma, in Case No. CS-88-04758, against Lester Leon Herron dated March 21, 1989, in the amount of $1,352.35, with interest at 10.920 percent per annum from date of judgment until paid, and a $270.00 attorney fee to Works, Lentz & Pottorf, Inc., with all costs of the action accrued and accruing. This judgment was recorded on March 27, 1989 in the records of Mayes County, Oklahoma in Book 698 at Page 837. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, in the principal sum of $40,706.59, plus accrued interest in the amount of $5,007.16 as of August 30, 1990, plus interest accruing thereafter at the rate of 10.75 percent per annum or $11.9890 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of $12,374.62, plus interest thereafter at the current legal rate of 4.41 percent per annum

until paid, plus the costs of this action in the amount of $42.64 ($20.00 docket fees, $14.64 fees for service of Summons and Complaint, $8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Mayes County, Oklahoma, have and recover judgment in the amount of $129.77 for personal property taxes for the years 1985, 1988, 1989, and 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Board of County Commissioners, Mayes County, Oklahoma, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, claim no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Service Collection Association, Inc., have and recover judgment in the amount of $1,352.35, with interest at 10.920 percent per annum from date of judgment until paid, and a $270.00 attorney fee to Works, Lentz & Pottorf, Inc., with all costs of the action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Lester L. Herron a/k/a Lester Leon Herron and Nancy Herron, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the

United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Mayes County, Oklahoma, in the amount of $58.48, personal property taxes which are currently due and owing;

Fourth:

In payment of Defendant, Service Collection Association, Inc., in the amount of $1,352.35, with interest at 10.920 percent per annum from date of judgment until paid, and a $270.00 attorney fee to Works, Lentz & Pottorf, Inc., with all costs of the action accrued and accruing;

Fifth:

In payment of Defendant, County Treasurer, Mayes County, Oklahoma, in the amount of $71.29, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

MARK G. ROBB, OBA #11489
Attorney for Defendant,
Service Collection Association, Inc.

BILL CASTOR, OBA #1560
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-405-C

PB/esr

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN - 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ARCHIE SCOTT and
MAXINE SCOTT, His Wife,
MARK SCOTT and TARA SCOTT,

Plaintiffs,

v.

Delaware County, Oklahoma;
Delmar Harmon, individually
and as County Commissioner of
Delaware Count, Oklahoma; and
"Unidentified county employees who
operated county road maintenance
equipment."

No. 91-C-918-E

NOTICE OF DISMISSAL

Come now, plaintiffs herein, Archie Scott and Maxine Scott, husband and wife, Mark Scott and Tara Scott, by and through their attorney, John F. Arens of Arens Law Firm, and respectfully give notice to this Court of the dismissal of plaintiff's Complaint herein without prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Respectfully submitted,

ARENS LAW FIRM

By: _____

John F. Arens
31 East Center St.
P. O. Box 1928
Fayetteville, AR 72702

(501) 442-0584

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing was served on the following persons:

Delaware County, Oklahoma
by and through
Margaret Melton, County Clerk
327 5th Street
Delaware County Courthouse
Jay, Oklahoma 74346

Delmar Harmon
County Comm., Dist. 3
Route 1
Colcord, Oklahoma 74338

on this 31st day of December, 1991, via first-class U.S. Mail, sufficient postage prepaid.

Lana Barclay

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 2 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GEORGE C. LEAVERTON,

Plaintiff,

vs.

CHEROKEE BUMPER EXCHANGE COMPANY,

Defendant.

91-C-750-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW Plaintiff and Defendant above named, by and through their respective counsel of record, and, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, stipulate to the dismissal of the above-styled and numbered cause with prejudice to any future action.

FRASIER & FRASIER

By: _____

Steven R. Hickman OBA # 4172
P.O. Box 799
Tulsa, OK 74101-0799
918-584-4724
Attorneys for Plaintiff

and

BOONE, SMITH, DAVIS, HURST & DICKMAN

By: _____

Paul J. Cleary OBA #1727
100 West 5th Street
Tulsa, OK 74103
918-587-0000
Attorneys for Defendant